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Consolidated Laws of New York Annotated

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THE CONSOLIDATED LAWS OF NEW YORK
ANNOTATED

The books of this edition are arranged and numbered as follows:

1. Report of Consolidators and Treatise on Statutes and Statutory Construction
2. Constitution of New York Annotated, Constitution of the United States, Declaration of Independence and Magna Charta
3. Agricultural (*Repealed*)
— Agriculture and Markets (*See Farms and Markets*)
3a. Arbitration
4. Banking
5. Benevolent Orders
6. Business Corporations
7. Canal
7a. City Home Rule
7a. City Local Option (*Repealed*)
8. Civil Rights
9. Civil Service
9a. Condemnation
10. Conservation
10a. Co-operative Corporations
11. County
12. Debtor and Creditor
13. Decedent Estate
14. Domestic Relations
15. Drainage (*Repealed*)
16. Education
17. Election
18. Executive
18a. Farms and Markets (*Now Agriculture and Markets*)
— General Associations (*See Joint-Stock Association*)
19. General Business
20. General City
21. General Construction
22. General Corporation
22a. General Highway Traffic
23. General Municipal
24. Highway
25. Indian
26. Insanity (*Now Mental Hygiene*)
27. Insurance
28. Joint-Stock Association (*Now General Associations*)
29. Judiciary
30. Labor
31. Legislative
32. Lien
33. Liquor Tax (*Repealed*)
34. Membership Corporations
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34a. Mental Hygiene
35. Military
36. Navigation
37. Negotiable Instruments
38. Partnership
39. Penal
40. Personal Property
41. Poor
42. Prison
43. Public Buildings
44. Public Health
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46. Public Officers
47. Public Service Commission
47a. Public Works
48. Railroad
49. Real Property
50. Religious Corporations
51. Salt Springs
52. Second Class Cities
53. State Boards and Commissions
54. State Charities
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58. Stock Corporation
59. Tax
60. Tenement House
61. Town
62. Transportation Corporations
63. Village
64. Workmen's Compensation
65. Unconsolidated Laws
66. Complete Table of Laws Repealed
67. General Index

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2d cop. New York. Laws, statutes etc. compilations

THE CONSOLIDATED LAWS OF NEW YORK, ANNOTATED

C

AS AMENDED TO THE CLOSE
OF THE REGULAR SESSION OF
THE LEGISLATURE OF 1916

Compiled under the Editorial Supervision of
WILLIAM M. McKINNEY

BOOK 7

Canal Law

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EDWARD THOMPSON COMPANY
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STATE OF NEW YORK
OFFICE OF THE SECRETARY OF STATE } ss:

In pursuance of the authority vested in me, by section 932 of the Code of Civil Procedure, I, Francis M. Hugo, Secretary of State, hereby certify that the copies of the laws contained in this volume are correct transcripts of the text of the original laws, and in accordance with such section are entitled to be read in evidence.

Given under my hand and the seal of office of the Secretary of State, at the Capitol in the City of Albany, this 5th day of July, 1916.

[L. S.]

FRANCIS M. HUGO,
Secretary of State.

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The annotations in this book close with the cases reported in the following volumes:

216 New York
169 Appellate Division
92 Miscellaneous
157 New York Supplement

The Supplements will cover decisions from these points.

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CONSOLIDATORS' NOTES ON THE CANAL LAW

Scope of Law

The Canal Law is the result of an examination of the various general statutes upon the subject of the canals of the state, beginning with L. 1817, ch. 262, "An act respecting navigable communication between the great western and northern lakes and the Atlantic Ocean," and ending with the session of 1907.

The scope of the Canal Law is given by the context of article 2, section 2, which applies the law to the canals known as the Erie, Champlain, Cayuga and Seneca, Oswego, Black River canal and Erie canal feeder, and the side cuts belonging to the state connected with said canals. The intention of the board has been to embody in the consolidation all the live provisions of statutes which relate to the subject above defined, and to eliminate, by a comprehensive schedule of repeals, all the dead and inactive general statutes which applied to the topic of canals coming within the quoted definition. The so-called Barge Canal acts have not been included in Canal Law, as those statutes do not apply to the canals named in article 2, section 2 of that law.

Historical Note

Legislation on the subject of the canals has been prolific, the progress of time and the improvement in methods having introduced many changes in the system of administration. Its beginning was a private corporate enterprise with conditional state aid, by L. 1792, ch. 40, which incorporated the Northern Inland Lock Navigation Company and the Western Inland Lock Navigation Company. The growth of the state demanding greater facilities in inland water communication, by L. 1811, ch. 288, a commission was appointed and authorized to seek the co-operation of Congress and the legislature of any state; to make application for grants and cessions from owners of land; to ascertain whether loans could be procured on the credit of the state, and the terms on which the Western Inland Lock Navigation Company would surrender their rights and interests to the state. This, which is probably the earliest movement in this state along the lines of municipal ownership, was followed by L. 1812, ch. 231, authorizing the commissioners named in the statute of 1811 to purchase the interests, rights and estate of the Western Inland Lock Navigation Company, and take the charge and management of the same; to procure voluntary cessions of land and to negotiate a loan of not more than $5,000,000 on the faith and credit of the state.

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Consolidators' Notes

By L. 1816, ch. 237, the statutes of 1811 and 1812, above cited, were repealed and a new commission appointed clothed with the requisite powers to prosecute the undertaking.

In 1817 [L. 1817, ch. 262] the canal fund was constituted and its management placed in "the commissioners of the canal fund, consisting of the lieutenant-governor, the surveyor-general, secretary and treasurer." The powers of the commissioners under L. 1816, ch. 237, were continued under the name of "the canal commissioners," and they were directed to commence the making of the canals by opening communication between the Mohawk and Seneca rivers, and between Lake Champlain and the Hudson river.

The Revised Statutes [L. 1827–1828] revised the active legislation relating to the canals, and that revision is the foundation for subsequent "revisions."

In the consolidation of this law an examination of upward of 250 general statutes has been made, and the schedule of repeals has been extended to cover 271 instances of dead general statutes as against 88 repeals contained in the schedule of repeals of the "old" Canal Law.

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CANAL LAW

LAWS 1909, CHAP. 13

AN ACT relating to canals, constituting chapter five of the consolidated laws.

Became a law February 17, 1909, with the approval of the Governor. Passed by a two-thirds vote.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

[7]

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CANAL LAW

CHAPTER 5 OF THE CONSOLIDATED LAWS

Article 1. Short title (§ 1).
2. State canals (§§ 2–5).
3. Canal board (§§ 15–21).
4. Superintendent of public works (§§ 30–48).
5. State engineer; department of canals (§§ 60–69).
6. Appropriation of lands and water (§§ 80–88).
7. Surplus water (§§ 100–111).
8. Highways and bridges (§§ 120–128).
9. Contracts (§§ 140–154).
10. Navigation (§§ 170–192).
11. Laws repealed; when to take effect (§§ 200, 201).

ARTICLE 1

Short Title

Section 1. Short title.

§ 1. Short title.—This chapter shall be known as the "Canal Law."

The original Canal Law was chapter 13 of the General Laws, being L. 1894, ch. 338.

"Canal Funds" is the title of article IV of the State Finance Law, §§ 60–65.

ARTICLE 2

State Canals

Section 2. Designation of canals.
3. State dam at Waterloo.
4. Maps and field-notes.
5. Copies of maps and field-notes in county clerk's office.

§ 2. Designation of canals.—This chapter applies to the following canals:

1. The Erie canal, connecting the waters of Lake Erie with those of the Hudson river.

2. The Champlain canal, connecting the waters of Lake Champlain with those of the Hudson river.

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3. The Cayuga and Seneca canal, commencing at Geneva and terminating near Montezuma, connecting the waters of Seneca lake with the Erie canal.

4. The Oswego canal, commencing at Syracuse and terminating at Oswego.

5. The Black River canal and Erie canal feeder, extending from the foot of the high falls in the Black river, in the county of Lewis, to the Erie canal at Rome, with a navigable feeder from the Black river to the summit level near the village of Boonville.

The term "canal," as used in this chapter, includes all the side cuts, feeders and other works belonging to the state connected therewith.

This is section 2 of the original Canal Law of 1894.

Constitutional provisions.— The canals of the state cannot be sold, leased or otherwise disposed of, but shall remain the property of the state and under its management forever. Const., art. 7, § 8. "What the framers of the constitution intended by this provision was that the canal, as a highway of communication, should not be sold or leased, but remain the property of the state and forever under its management, in order to promote the commercial prosperity of the people." Sweet v. Syracuse, (1891) 129 N. Y. 316, 27 N. E. 1081, 29 N. E. 289, reversing 60 Hun 28, 14 N. Y. S. 421. There is no covenant or guaranty on the part of the state that a canal shall be used for any period of time, or that it shall never be abandoned. Whitney v. State, (1884) 96 N. Y. 240.

Canals are to be maintained by the state, and no tolls are to be imposed. Const., art. 7, § 9.

Canals may be improved in such manner as the legislature shall provide by law, and a debt may be authorized for that purpose, or the cost of such improvement may be defrayed by the appropriation of funds from the state treasury, or by equitable annual tax. Const., art. 7, § 10.

Construction and operation of canals, see note 61 L. R. A. 833.

Meaning of the term "canal" — character and object.— "The canal waterways, for the navigation of boats, were not to be sold, leased or otherwise disposed of, under any act of the legislature; nor could the legislature authorize the sale of any other property or thing owned by the state connected with the canals, and actually essential to their operation and maintenance." Sweet v. Syracuse, (1891) 129 N. Y. 316, 27 N. E. 1081, 29 N. E. 289, reversing 60 Hun 28, 14 N. Y. S. 421; Op. Atty.-Gen. (1907) 546. The canals are public highways or thoroughfares, and afford equal advantages and opportunities to every citizen of the state who has occasion to use them. Op. Atty.-Gen. (1904) 228. The object of a canal is to hold and retain water for the purpose of navigation. Heacock v. State, (1887) 105 N. Y. 246, 11 N. E. 638.

Title to canal lands.— It was early the policy of the state to acquire title in fee to lands appropriated for canal purposes, and this policy has been adhered to uniformly. People v. Fisher, (1908) 190 N. Y. 468, 83 N. E. 482, affirming 116 App. Div. 677, 101 N. Y. S. 1047; Sweet v. Syracuse, (1891) 129 N. Y. 316, 27 N. E. 1081, 29 N. E. 289, reversing 60 Hun 28, 14 N. Y. S. 421. The state may however authorize the appropriation of an estate less than the fee in lands required for canal purposes. People v. Walsh, (1914) 211 N. Y. 90, 105 N. E. 136, reversing 159 App. Div. 252, 144 N. Y. S. 367.

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Prior to the passage of the Canal Law, the provisions of the statutes operated to give the state a good title to land and water upon which it had entered and taken possession, after the lapse of one year from such entry and possession, and provided a remedy by which, within the year, the owners of property might obtain compensation therefor. Benedict v. State, (1890) 120 N. Y. 228, 24 N. E. 314; Heacock v. State, (1887) 105 N. Y. 246, 11 N. E. 638; Stewart v. State, (1887) 105 N. Y. 254, 11 N. E. 652; Mack v. State, (1885) 97 N. Y. 572; Miller v. State, (1910) 68 Misc. 607, 125 N. Y. S. 148. For a historical review of sources of title to the lands and waters of the state, see Fulton Light, etc., Co. v. State, (1909) 65 Misc. 263, 121 N. Y. S. 536.

Prescriptive easement in waters of canals.— An easement in the waters of the state canals cannot be obtained by prescription, and no private use or occupancy, either adverse or by permission, however long continued, will vest a title inconsistent with the public right, or impair or affect the rights of the state. Burbank v. Fay, (1875) 65 N. Y. 57, affirming 5 Lans. 397. But this rule does not apply to canals which have been abandoned as of no further use to the people of the state. People v. Stephens, (1878) 13 Hun 17.

Taxation of canals.— The legislature cannot authorize a municipal corporation to tax canals. Elwood v. Rochester, (1887) 43 Hun 102, 6 N. Y. St. Rep. 132, affirmed 122 N. Y. 229, 25 N. E. 238.

Erection of dam across Black river.— The erection of a permanent dam across Black river, and the consequent overflow upon adjacent lands, was held to be the taking of a permanent easement by the state for canal purposes. Benedict v. State, (1890) 120 N. Y. 228, 24 N. E. 314.

Erection of dam across Oswego river.— The erection of a dam across Oswego river was a permanent structure necessary for canal navigation, and its effect in setting back the water was so evidently permanent and lasting, as to show that if the state did not formally take a fee it at least took a continuous and lasting easement, which was almost in its consequences equivalent to an entire appropriation of the land. Stewart v. State, (1887) 105 N. Y. 254, 11 N. E. 652.

§ 3. State dam at Waterloo.—The superintendent of public works is authorized to maintain a state dam at Waterloo, at a height not exceeding the height of the original state dam at that place, but so as not to raise the waters of Seneca lake above the natural height of the waters of the lake, but no claim shall be made or allowed for any damages to any property by reason of raising such dam to its original height.

This is section 3 of the original Canal Law of 1894.

§ 4. Maps and field-notes.— There shall be kept on file in the office of the state engineer complete manuscript maps and field-notes of every canal now or hereafter to be built and of all the lands belonging to the state adjacent thereto or connected therewith, in which the boundaries of every parcel of land to which the state shall have a separate title shall be designated, and the names of the former owners and the date of each title entered. The expense of all such maps and field-notes shall be paid out of

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the appropriations made for the support and maintenance of the canals. All such maps and field-notes approved by the canal board or superintendent of public works or certified by such board or superintendent or by the state engineer to be correct, shall be presumptive evidence of the truth of the facts therein stated and of the ownership by the state of the lands therein described.

This is substantially section 4 of the original Canal Law of 1894. As it formerly read it made maps and field-notes when approved by canal commissioners presumptive evidence of the truth of the facts therein stated, but section 4 of the present Canal Law omits the words "canal commissioners" as the office of canal commissioners has been abolished. The Report of the Board of Statutory Consolidation (1907) at page 400 says: "The amendment to the Constitution, concurrent resolution, Feb. 4, 1876, which created the office of superintendent of public works, abolished the office of canal commissioner, from and after the appointment and qualification of the superintendent of public works. The Constitution of 1895, art. 5, § 3, provides that the superintendent of public works shall perform all the duties of the former canal commissioners and board of canal commissioners."

Effect of maps on vesting of title.— State maps alone do not show or vest conclusive title in the state. Rexford v. Knight, (1854) 11 N. Y. 308, affirming 15 Barb. 627; Carpenter v. Cohoes, (1880) 81 N. Y. 21, 37 Am. Rep. 468. The judgment of the state engineer is not necessarily conclusive, and when he makes and files a map calling for the appropriation of land outside of the line of the canal as fixed by the canal board, such appropriation is unauthorized. Ontario Knitting Co. v. State, (1912) 205 N. Y. 409, 98 N. E. 909, affirming 147 App. Div. 316, 131 N. Y. S. 918, 69 Misc. 145, 125 N. Y. S. 57.

Filing of maps as constituting appropriation.— The mere filing of a map does not constitute an appropriation where nothing has been done by the state to interfere with the control or possession of land by its owner. New York Cent. R. Co. v. State, (1899) 37 App. Div. 57, 55 N. Y. S. 685. The appropriation is only complete when the officers of the state have entered upon and taken possession of the land, and have constructed the canal. Miller v. State, (1914) 164 App. Div. 522, 149 N. Y. S. 788.

Maps as evidence.— State maps are prima facie of the state's title. Rexford v. Knight, (1854) 11 N. Y. 308, affirming 15 Barb. 627; Carpenter v. Cohoes, (1880) 81 N. Y. 21, 37 Am. Rep. 468. The Court of Claims, in passing upon the right of a claimant to damages, may receive in evidence and consider the Holmes-Hutchinson maps of 1834, as an aid in determining whether the claimant's lands were appropriated when the Erie canal was originally constructed, and it may also admit in evidence drawings in the office of the division engineer relating to the location under consideration. Miller v. State, (1914) 164 App. Div. 522, 149 N. Y. S. 788.

§ 5. Copies of maps and field-notes in county clerk's office.— A copy of every map and of all field-books and notes so filed or of such part thereof as relates to the canal lands in any county, certified by the state engineer to be a correct copy thereof, shall be filed in the clerk's office of such county, and shall be evidence with like force and effect as the original maps and field-notes of

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which it is a copy. Transcripts of a part of any such map or field-notes, certified by the officer having the custody of the original or certified copies from which they are made, to be correct copies thereof, shall be evidence as to the parts contained in such transcripts, with the same force and effect as if the originals were produced.

This is section 5 of the original Canal Law of 1894.

ARTICLE 3

Canal Board

Section 15. General powers.
16. Power to permit erections for commercial or manufacturing purposes.
17. Meetings and publications of minutes of board.
18. Investigation of charges against superintendents of repairs and other officers of the board.
19. Frauds to be investigated.
20. Witnesses on investigation; expenses.
21. Bureau of canal affairs.

§ 15. General powers.— The canal board may:

1. Make, from time to time, rules and regulations, not inconsistent with law, for the transaction of the business of the board, the discharge of its duties, and the conduct of hearings before it.

2. Determine the boundaries of the three divisions of the canals of the state, and change such boundaries when deemed expedient.

3. Determine whether any lands, taken for the purposes of the canals, may be sold or exchanged for other lands, beneficially to the state, and in all cases of determination that any such lands may be so sold or exchanged, may sell the same, or may exchange the same for other lands required for the purposes of the canals, and in order to carry any such sale or exchange into effect may authorize the superintendent of public works to execute and deliver to the purchaser, in the name of the people of the state, a quit-claim of such lands. But before such deed shall be effective, it shall be recorded by the superintendent of public works in the office of the secretary of state. And the superintendent of public works is hereby directed forthwith to record duplicates of all deeds heretofore executed by him under this subdivision in the

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office of the secretary of state. This provision shall not be construed to affect the powers of the commissioners of the land office to sell abandoned canal lands, as otherwise directed by law.

Amended by L. 1910, ch. 350; L. 1915, ch. 430. The subdivision formerly read as follows: "Determine whether any lands, taken for the purposes of the canals, may be sold beneficially to the state." This was amended in 1910 to read as follows: "Determine whether any lands, taken for the purposes of the canals, may be sold or exchanged for other lands beneficially to the state, and in all cases of determination that any such lands may be so sold or exchanged, may sell the same, or may exchange the same for other lands required for the purposes of the canals, and in order to carry any such sale or exchange into effect may authorize the superintendent of public works to execute and deliver to the purchaser, in the name of the people of the state, a quitclaim deed of such lands."
The amendment of 1915 added everything after the first sentence.

4. Determine whether lands, taken for the purposes of the canals, have been abandoned.

5. Investigate all matters and transactions connected with or pertaining to the canals of the state, and take proofs in regard to any matter pending before the board or which it is authorized to examine or investigate.

6. Appoint one or more members of the board a committee to hear any matter pending before it and take proofs in regard thereto and report thereon to the board, with the proofs taken and his or their opinion thereon. Such members shall have the same powers with respect to such hearing as the board would have had if it had been before such board.

7. Grant a rehearing in any case where they are authorized to adjudicate, when, in their judgment, justice may require it, if application in writing be made therefor within sixty days after such hearing or adjudication; but there shall not be more than one rehearing and the decision on any such rehearing shall be final and conclusive.

8. Remit, either absolutely or on such conditions as they prescribe, any forfeiture incurred by a violation of any provision of this chapter, or any of the rules and regulations established by the board or by the superintendent of public works, on the written petition of the person liable for the forfeiture, with due proof of the facts on which the application for the remission is founded, which petition and proofs and the order of the board thereon shall be filed and preserved in the office of the comptroller.

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9. Examine and approve or disapprove, by a resolution to be entered upon its minutes, all plans, specifications and estimates transmitted to it by the state engineer, and a certificate of such approval, when given, shall be indorsed by the clerk of said board upon each of such plans.

10. Order the sale for a term of years to the person bidding the highest annual rent therefor of any surplus water which may be spared on any canal or works connected therewith, without injury to the navigation and safety of the canals, when the persons entitled to the first privilege of taking such water do not avail themselves thereof or there is no person so entitled.

This section is, with the exception of subdivision 3, substantially section 10 of the original Canal Law of 1894.

Composition of canal board.— The canal board consists of the lieutenant-governor, secretary of state, comptroller, state treasurer, attorney-general, state engineer and surveyor and the superintendent of public works. Const., art. 5, § 5. Ontario Knitting Co. v. State, (1912) 205 N. Y. 409, 98 N. E 909, affirming 147 App. Div. 316, 131 N. Y. S. 918.

Rescission of contracts.— The canal board cannot, after a contract has been lawfully entered into and approved, annul such contract by reconsidering its approval, as the state must be governed by the same rules of common honesty and justice which bind individuals, and it is not superior to its valid agreements. People v. Sohmer, (1913) 207 N. Y. 450, 101 N. E. 164, reversing 152 App. Div. 581, 137 N. Y. S. 384.

Power to declare canal lands abandoned.— The canal board is authorized to declare canal lands abandoned under certain conditions, after which the commissioners of the land office may dispose of the lands so abandoned. Op. Atty.-Gen. (1900) 128.

Sale of useless or abandoned canals.— The state may authorize the sale of property once used for canals, but no longer required for canal purposes. Sweet v. Syracuse, (1891) 129 N. Y. 316, 27 N. E. 1081, 29 N. E. 289, reversing 60 Hun 28, 14 N. Y. S. 421; Dewitt v. Elmira Transfer R. Co., (1892) 134 N. Y. 495, 32 N. E. 42; Eldridge v. Binghamton, (1890) 120 N. Y. 309, 24 N. E. 462, affirming 42 Hun 202, 4 N. Y. St. Rep. 696; Lynch v. Partridge, (1901) 36 Misc. 302, 73 N. Y. S. 469. The sale may include the bed of an abandoned canal. People v. Stephens, (1878) 13 Hun 17. The useless portions of a canal may be sold. Comstock v. Syracuse, (1889) 5 N. Y. S. 874; Op. Atty.-Gen. (1909) 706. The disposition of abandoned canal lands is vested, not in the canal board, but in the commissioners of the land office. Public Lands Law, § 50; Op. Atty.-Gen. (1909) 475.

Title to abandoned canal lands.— Title to abandoned canal lands does not revert to a former owner, but remains the property of the state. Genesee Valley Canal R. Co. v. Slaight, (1888) 49 Hun 35, 1 N. Y. S. 554; Rexford v. Knight, (1854) 11 N. Y. 308.

Leases and sales of surplus waters.— There have been many leases and sales of surplus waters of the canals in various parts of the state, and it has never been held that such disposition of the surplus waters was a violation of the constitution. Sweet v. Syracuse, (1891) 129 N. Y. 316, 27 N. E. 1081, 29 N. E. 289, reversing 60 Hun 28, 14 N. Y. S. 421; Dermott v. State, (1885) 99 N. Y. 101, 1 N. E. 242. A statute permitting a city to draw water from a lake for its own use, which water is not needed for canal use, is not inconsistent with the integrity of the canal system, nor is it repugnant to the

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constitution. Sweet v. Syracuse, (1891) 129 N. Y. 316, 27 N. E. 1081, 29 N. E. 289, reversing 60 Hun 28, 14 N. Y. S. 421; Op. Atty.-Gen. (1903) 294.

Easement of telephone and telegraph companies over canal lands.— The canal board may approve of settlements made with telephone or telegraph companies wherein it is provided that such companies shall, subject to such restrictions as are for the best interests of canal construction and operation, receive as part consideration for the settlement of their claims for damages for appropriated lands, quitclaim deeds of an easement over canal lands for their poles and wires. Op. Atty.-Gen. (1910) 560.

Release to former owner of land found unnecessary.— Where the state acquires title to real property without consideration, the commissioners of the land office may release to the person from whom the same was acquired, or his heirs or assigns, all title and interest of the state, where the state engineer certifies that the lands are not required for canal purposes, and where the canal board decides that such lands are abandoned. Public Lands Law, § 51; Op. Atty.-Gen. (1909) 475.

§ 16. Powers[1] to permit erections for commercial or manufacturing purposes.— The board may grant permission, on such terms and conditions as it deems proper, for the erection of warehouses, mills or other buildings for commercial or manufacturing purposes upon any dam, pier, mole or other work erected by the board or by the superintendent of public works in any canal, lake, river or other body of water, and for the use of such an amount of water power created by such dam, pier, mole or other work as may, in the opinion of the board, be so erected and used without injury thereto, and without detriment or obstruction to the public use thereof, or to the navigation of such canal, lake, river or other body of water; such permission, except in the case of the pier in the Niagara river at Black Rock, shall be granted only to the owner of the land from which the water to be used flows, or the owner of the land adjoining the river or other stream or water at the place where such dam, mole or other work is erected.

Such permission shall be by resolution of the board, entered at full length in the minutes, including all the terms, conditions and stipulations which the board deems expedient, and a written lease in duplicate shall be executed in conformity to such resolution, by the comptroller, on behalf of the state, and by the lessee; one of such duplicates shall be deposited in the office of the comptroller and the other delivered to the lessee.

Every such building shall be erected at such point, on such plan and not exceeding such dimensions as the superintendent of public works specifies, by a minute in writing, recorded at full length in his office, a copy of which, certified by him, with a written assent of the lessee indorsed thereupon or annexed thereto,

[1] So in original.

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shall be filed in the office of the comptroller before the delivery of the lease. The board may also with the consent of the superintendent of public works grant permission for the use of any of the state lands adjoining any reservoir or of any island or islands in any reservoir as a public pleasure resort, and for the erection of buildings thereon, upon such terms, conditions, covenants and restrictions as the board may deem proper.

This is for the most part section 11 of the original Canal Law of 1894, as amended by L. 1900, ch. 522, § 1. The consolidation eliminated, however, the following paragraph: "This section does not affect or impair the restriction of leasing surplus waters under the joint resolution of the senate and assembly, passed April twenty-five, eighteen hundred and thirty-one." The reason for the elimination of this paragraph appears in the Report of the Board of Statutory Consolidation (1907) at page 400, as follows:

"The various statutes enacted prior to the R. S., which related to the lease of surplus water, were revised in R. S., pt. 1, ch. 9, tit. 9, art. 5. This statute, by L. 1828, ch. 20, § 8, 2d meeting, went into effect Jan. 1, 1830. On April 23, 1831, the Assembly adopted the following resolution: Resolved, if the Senate concur herein, That the canal commissioners do suspend all further proceedings under the statute authorizing the leasing of the water of the canals, and of any works appended thereto. On April 25, 1831, the following resolution was passed by the Senate: Resolved, That the Senate do concur with the Assembly in said resolution, with an amendment by adding thereto the words following, to wit: 'Except the surplus water at Black Rock, and at the Troy dam.'

"This concurrent resolution suspended the leasing of surplus water under the provisions of R. S., pt. 1, ch. 2, tit. 9, art. 5.

"L. 1840, ch. 292, 'an act relating to the powers and duties of the canal board,' is in substance the same as 1894, Ch. 338, § 11. The concurrent resolution of April 25, 1831, had reference to the leasing of surplus water under the provisions of R. S., pt. 1, ch. 9, tit. 9, art. 5. The Canal Law, which, in substance, re-enacted L. 1840, ch. 292, also, in terms, repealed R. S., pt. 1, ch. 9, tit. 9, art. 5, and L. 1840, ch. 292. There does not appear to be any reason why a concurrent resolution of the legislature, passed in 1831, and which suspended the action of a statute which went into effect the year previous [and which last-named statute has been specifically repealed] should be carried into and made a part of the present canal law, especially as the present canal law does provide for the use and lease of surplus water."

§ 17. **Meetings and publication of minutes of board.**— The assent of four members of the board shall be required for the adoption of all questions or resolutions, involving the expenditure or appropriation of the public moneys, and all such questions or resolutions shall be taken by ayes and noes and entered upon the minutes. The secretary of the board shall cause the minutes of the board to be published in the state paper as soon as may be after each session.

This is section 12 of the original Canal Law of 1894.

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§ 18. Investigation of charges against superintendents of repairs and other officers of the board.— When any charges of misconduct, malfeasance or incompetency in office are made against any superintendent of repairs or other officer appointed or employed by the canal board or by the superintendent of public works, the canal board may direct the district attorney of the county where such official misconduct, malfeasance or incompetency is charged to have been committed or exhibited, to conduct an inquiry into the truth of such charges before the county judge of the county, and the same proceedings shall be had thereon as are provided by law in the case of charges made for the removal of a sheriff or county clerk, except that the testimony so taken shall be transmitted to the canal board. The necessary expenses of any such inquiry shall be certified by the canal board and paid out of the canal fund.

This is section 13 of the original Canal Law of 1894.

Charges and removals.— The fact that another person could more efficiently perform the duties of an office is not sufficient grounds for removal. People v. Board of Fire Com'rs, (1878) 72 N. Y. 445. A chief engineer whose work shows lack of ability and skill, or an inefficient control of employees, may be removed. People v. Campbell, (1880) 82 N. Y. 247.

§ 19. Frauds to be investigated.— The superintendent of public works or the state engineer may report to the board any suspected fraud or misconduct on the part of any engineer or assistant, in relation to the public works, and the board may employ such agents and engineers as they deem proper, to aid in the investigation of such charges, and the expenses of such investigation shall be paid out of the canal fund.

This is section 14 of the original Canal Law of 1894.

§ 20. Witnesses on investigation; expenses.— The examination of a witness in an investigation by the board or a committee thereof, shall be open and public if such witness so request. A witness may have counsel and his examination by such counsel shall be reduced to writing as a part of his deposition. Other witnesses on the same matter may be excluded by the board or committee during the examination of a witness. A person examined under this article shall not be excused from testifying on the ground that his evidence would tend to criminate or degrade him, but his testimony shall not be used against him in any criminal action or proceeding. All evidence taken under

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this article shall be filed with the attorney-general. On the order of the board, the comptroller shall pay all expenses incurred by it in an investigation out of any moneys in the treasury appropriated for canal purposes.

This is section 15 of the original Canal Law of 1894.
Rights and privileges of witnesses, see Const., art. 1, § 6.
Attendance of witnesses, see Code Civ. Pro., §§ 852–869.
Privileges of witnesses.— A witness may decline to testify upon the ground that his evidence would tend to degrade or incriminate him, and his refusal may properly be based upon facts known only to himself. People v. Forbes, (1894) 143 N. Y. 219, 38 N. E. 303, reversing 77 Hun 612, 28 N. Y. S. 1123; Matter of Atty.-Gen., (1897) 21 Misc. 101, 47 N. Y. S. 20; People v. O'Brien, (1903) 176 N. Y. 253, 68 N. E. 353, affirming 81 App. Div. 51, 80 N. Y. S. 816. Testimony given under compulsion, and which may tend to degrade or incriminate, is privileged. People v. Sharp, (1887) 107 N. Y. 427, 14 N. E. 319, 1 A. S. R. 851.

§ 21. Bureau of canal affairs.— The bureau of canal affairs, heretofore established shall be continued in the office of the comptroller and the comptroller shall designate some person in his office to be the secretary of the commissioners of the canal fund and of the canal board.

Amended by L. 1913, ch. 772. The section before amendment read as follows: "The bureau of canal affairs heretofore established in the office of the comptroller is continued, and the chief clerk of such bureau shall be the secretary of the commissioners of the canal fund and of the canal board." The section as incorporated in the Consolidated Laws was section 16 of the original Canal Law of 1894, being added to that law by L. 1901, ch. 413.

ARTICLE 4

Superintendent of Public Works

Section 30. Superintendent of public works.
31. Assistant superintendents.
32. Deputy superintendent.
33. General powers and duties of superintendent.
34. Accounts of superintendent.
35. Powers with reference to railroad near the canals.
36. Duties of superintendent of repairs.
37. Advances to superintendent of repairs.
38. Monthly abstracts of disbursements of superintendent of repairs.
39. Police powers.
40. Administration of oaths by clerks and special agents.

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Section 41. Exemption of canal officers from arrest in civil actions.
42. Ineligibility to appointment on the canals.
43. Canal officers not to be interested in boats, contracts or hydraulic works.
44. Delivery of property upon discharge of employees.
45. Canada thistles and other noxious weeds on the banks of canals to be cut.
46. Commissioners of the canal fund to allow claims.
47. Claims for damages.
48. Electrical or other improved systems of towage.

§ 30. Superintendent of public works.— The superintendent of public works shall be paid an annual salary of six thousand dollars and all traveling expenses necessarily and actually incurred in the discharge of his duties. Before entering on the duties of his office, he shall execute an official undertaking in the sum of fifty thousand dollars, to be approved by and filed in the office of the comptroller, and to be renewed as often as the governor requires. The sureties on such undertaking and on the undertaking of the assistant superintendents and deputy superintendents shall be freeholders of this state.

This is former section 20 of the original Canal Law of 1894

Appointment, powers and duties of superintendent of public works, see Const., art. 5, § 3. The compensation of the superintendent of public works is to be fixed by law, which shall not be increased or diminished during his term of office, and no fees or other compensation are to be received. Const., art. 10, § 9.

Removal from office, see PUBLIC OFFICERS LAW, §§ 31–35.

Application of Civil Service Law to appointments made by superintendent of public works.— It was formerly held that the Civil Service Law did not apply to appointments made by the superintendent of public works, as any limitation upon his discretionary power of appointment was regarded as being in derogation of his constitutional authority. People v. Angle, (1888) 109 N. Y. 564, 17 N. E. 413, affirming 47 Hun 183. That rule was abrogated, however, by the adoption of article 5, section 9, of the Constitution, and it is now well settled that appointments in the department of public works are subject to the provisions of the Civil Service Law. "The Constitution, as it now exists, must be read and considered in all its different parts, and each provision must be given its appropriate place in the system and some office to perform, and at the same time all must be so construed as to operate harmoniously. The application of these familiar rules of constitutional construction removes all doubt or difficulty with respect to the question under consideration, and the conclusion must follow that, while the power of appointment and removal is still with the superintendent of public works, it is subject to legislative regulation as to the mode and manner, and is brought within the operation of general laws on that subject." People v.

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Roberts, (1896) 148 N. Y. 360, 42 N. E. 1082, 31 L. R. A. 399, affirming 91 Hun 101, 34 N. Y. S. 641, 36 N. Y. S. 677.

Liability on bond.— The superintendent of public works and his bondsmen are liable for all funds coming under his control. Op. Atty.-Gen. (1905) 460.

§ 31. **Assistant superintendents.**— The assistant superintendents appointed by the superintendent of public works shall each be paid an annual salary of three thousand dollars, and all traveling expenses necessarily and actually incurred in the discharge of their official duties. Before entering on the discharge of the duties of his office, each assistant shall execute an undertaking in the sum of twenty thousand dollars, to be approved by and filed in the office of the comptroller and to be renewed as often as the superintendent may require.

This is section 21 of the original Canal Law of 1894.

The superintendent of public works shall appoint not more than three assistants, who shall hold office for three years, subject to suspension or removal by the superintendent. Const., art. 5, § 3.

Bonds of assistant superintendents.— Bonds of the assistant superintendents are required for the protection of the state, and not for individual protection. Op. Atty.-Gen. (1905) 460.

§ 32. **Deputy superintendent.**— The superintendent of public works may appoint a deputy to hold office during his pleasure, and may fix his compensation not to exceed four thousand dollars per year which deputy may perform any or all of the duties of the superintendent except those imposed upon him as a member of the canal board or of the capitol commission. Before entering on the duties of his office he shall execute an undertaking in the sum of twenty-five thousand dollars, to be approved by and filed with the comptroller and renewed as often as the governor may require.

This is substantially section 22 of the original Canal Law of 1894, as amended by L. 1896, ch. 188.

§ 33. **General powers and duties of superintendent.**— The superintendent of public works shall:

1. Have the general care and superintendence of the canals; enforce the faithful execution and observance of the canal law by all persons, and as a member of the canal board be entitled to one vote therein.

2. Assign an assistant superintendent to the charge of each of the three divisions of the canals, subject to his direction, supervision and control.

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3. Employ an engineer to act in an advisory capacity and such agents and other persons other than engineers as he deems necessary to enable him to discharge his duties.

4. Fix the compensation for the services of all officers, clerks and employees appointed by him, whose salary is not fixed by law, and make and file with the comptroller a schedule of the compensation so fixed.

5. Inquire into the official conduct of all superintendents of repairs, lock-keepers and other subordinates, and receive and hear all complaints preferred against them.

6. Call on the state engineer for the assignment of an engineer, whenever the services of an engineer are required upon any portion of the canals undergoing repairs, or upon any construction or improvement work.

7. Provide all necessary tools, materials and labor for the construction, improvement, repairs or navigation of the canals and make payment therefor on or before the fifteenth day of the month following that in which the same is provided.

8. When construction or improvement work is ordered by the legislature or canal board, request from the state engineer the requisite survey, maps, plans, specifications and estimates, and on their adoption by the canal board, take measures for the execution of such work; and before contracting for any work, submit to the state engineer the maps, plans, profiles and estimates therefor.

9. Direct and cause to be made such ordinary repairs of the canals as he deems necessary, and such extraordinary repairs and improvements thereof as are ordered by the canal board.

10. Make all such canals, feeders, locks, dams, aqueducts and other works as he deems the construction of every canal authorized by law to require; and enter upon, take possession of and use all lands, streams and water, the appropriation of which for the use of such canals and works is, in his judgment, necessary.

11. Keep in complete repair all edifices and weighing scales built or purchased for the use of the canal, and, at such times and places as the canal board direct, erect further edifices or weighing scales and purchase ground necessary therefor.

12. Make all necessary rules and regulations for the safe and speedy navigation, protection and maintenance of the canals and the structures thereof, for the government of all employees under

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his control engaged in their construction, improvement, repair and navigation, and for the payment for tools, materials and labor; impose such forfeitures of money, not exceeding the sum of twenty-five dollars for each offense, as he deems reasonable for the breach of such rules or regulations and prosecute therefor in the name of the state and pay over all money received on such prosecution into the state treasury. He shall cause such rules and regulations to be filed with the comptroller and a sufficient number of copies thereof, specifying the forfeiture for the breach thereof, to be printed and distributed to the assistant superintendents, superintendents of repairs and lock-keepers, to be kept in their respective offices for public inspection.

13. Permit, in his discretion, on such terms as he shall deem to be advantageous to the state, any person to cut, gather and haul away, ice from such canals whenever the same can be done without causing damage to the banks or other structures thereof.

14. Have charge of and exercise the same powers that he has as to other canals, over so much of the navigable waters of the Cayuga inlet as are necessarily used in connection with the canals; and cause such obstructions to be removed therefrom and such improvements to be made therein as may be necessary, from time to time, to keep the channel of such inlet of sufficient depth and capacity to admit the passage of any boat or water craft navigating the Erie canal.

14-a. Have charge of and exercise the same powers that he has as to other canals, over the waterway connecting Shinnecock and Peconic bays in the county of Suffolk, known as the Shinnecock and Peconic canal, and to remove such obstructions therefrom, from time to time, and make such improvements, as may be necessary to keep the channel of such canal of sufficient depth and capacity to admit the free passage of boats or water craft between such bays.

This subdivision added by L. 1913, ch. 229.

14-b. Have charge of and exercise the same powers and duties that he has as to the canal locks of the state, over all locks between the Saranac river and Lower Saranac lake and between Lower Saranac lake and Middle Saranac lake in the county of Franklin and make such improvements and repairs thereto from time to time as he may deem necessary.

This subdivision added by L. 1914, ch. 482.

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15. Report to the legislature annually, on or before February fifteen, the trade and tonnage transported upon the canals of the state during the preceding season of navigation, and within twenty days after the commencement of each annual session, the condition of the canals and the work and improvements connected therewith, the improvements and repairs made or contemplated during the past year, the amount of moneys received and expended during the same period, with recommendations of such measures in relation to the canals as in his judgment the public interests require.

With the exception of the added subdivisions, this section is substantially section 23 of the original Canal Law of 1894, as amended by L. 1907, ch. 495.

The superintendent of public works now performs all the duties of the former canal commissioners and board of canal commissioners. Const., art. 5, § 3.

***Power to make settlement of claim for damages,* see § 47 of this law.**

Discretionary power.— The superintendent of public works may determine what lands are necessary to widen, strengthen, or otherwise improve the canals, and may enter upon and permanently appropriate such lands as in his judgment may seem necessary. People v. Fisher, (1908) 190 N. Y. 468, 83 N. E. 482, affirming 116 App. Div. 677, 101 N. Y. S. 1047; People v. Walsh, (1914) 211 N. Y. 90, 105 N. E. 136, reversing 159 App. Div. 252, 144 N. Y. S. 367.

Delegation of discretionary powers.— The superintendent of public works may delegate discretionary powers, as "the fact is evident that all the places along the canals requiring attention and some discretion cannot respectively have the constant personal care and direction of the superintendent and the three assistants, whom by the constitution he is permitted to appoint, but such care and operation of many things requiring the exercise of some judgment must necessarily be left to persons employed for that purpose, under and within general instructions." Wright v. Eldred, (1887) 46 Hun 12, 11 N. Y. St. Rep. 73, affirmed without opinion 137 N. Y. 556, 33 N. E. 337.

Contracts for work.— Article 7, section 9, of the Constitution, which provides that all contracts for work and materials on any canal shall be made with persons who submit the lowest bid with adequate security, was not intended to confer a right upon the lowest bidder, but to protect the state. People v. Stevens, (1910) 67 Misc. 529, 124 N. Y. S. 769. The power conferred to make contracts involves an exercise of discretion and the determination as to who is the lowest bidder and what is adequate security. People v. Contracting Board, (1863) 27 N. Y. 378.

In the ordinary work of repairs and improvements the superintendent may do the work by contract or otherwise, as in his judgment may be best for the state, and the fact that public work may be ordered by law to be done upon plans and specifications of the state engineer and surveyor does not necessarily imply that it must be done by contract, for, unless the law directs such work to be done under contract, the superintendent may, in his discretion, do it otherwise. Op. Atty.-Gen. (1895) 235.

After a contract has been awarded the price of work and materials cannot be increased, even if so authorized by an act of the legislature. People v. Canal Board, (1871) 4 Lans. 272. But this rule does not apply where a change of plans was ordered and additional work was thereby involved. People v. Dayton, (1874) 55 N. Y. 367.

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Right of superintendent to rely upon estimates of state engineer.— The superintendent has a right to rely upon the estimates of the state engineer and surveyor in the execution of a contract. People v. Roberts, (1900) 163 N. Y. 70, 57 N. E. 98, reversing 45 App. Div. 145, 61 N. Y. S. 148.

Right to reject bids.— The superintendent of public works has power to reject any or all bids, and to readvertise for new bids, for work of canal improvements. Op. Atty.-Gen. (1897) 242; Op. Atty.-Gen. (1905) 463.

Compensation of laborers.— The legislature has the power to enact a general law regulating the compensation of laborers employed by the state, or by officers under its authority, and which does not interfere with any vested rights or contracts. The compensation of a laborer, so fixed by statute, cannot be reduced by a state officer under whom he is employed, and the fact that he takes for a time a reduced compensation does not estop him from subsequently claiming the residue. Clark v. State, (1894) 142 N. Y. 101, 36 N. E. 817.

Duty as to canal bridges.— It is a duty incumbent upon the state to keep bridges over canals in proper condition, and it is liable for any injuries resulting from its negligence in that respect. People v. Syracuse Rapid Transit R. Co., (1909) 129 App. Div. 800, 114 N. Y. S. 776.

Authority to rent locks.— There is no authority for a state officer or board to enter into a contract for the rental of any property used for canal purposes. Op. Atty.-Gen. (1899) 177.

License to telephone company.— The superintendent of public works has no power to issue an irrevocable license to a telephone company to erect poles and wires for a fixed term of years upon state canal lands. Op. Atty.-Gen. (1900) 162.

License to lay gas pipes.— The superintendent may permit a gas pipe to be laid over a bridge, where it does not endanger the bridge or interfere with its use. Op. Atty.-Gen. (1899) 156.

Right to take ice from canal.— The state is the owner of the ice which forms on canals, and may restrict the right to take ice therefrom to persons who must obtain permission from the superintendent of public works, and a person who obtains such permission is entitled to an injunction restraining another who has no permit. Green Island Ice Co. v. Norton, (1905) 105 App. Div. 331, 86 N. Y. S. 613, 94 N. Y. S. 1147.

Liability of state for negligence of canal officials.— The state is liable for damages resulting from the use or management of its canals, or arising from the neglect or conduct of any officer having charge thereof, as in any case where an individual or corporation would be liable. Greeley v. State, (1904) 94 App. Div. 605, 88 N. Y. S. 468.

§ 34. **Accounts of superintendent.**— The superintendent shall take duplicate receipts of all moneys advanced or paid by him and keep an accurate account of the recoveries in all actions brought by him, or under his direction, for the recovery of penalties or damages under this chapter and of the cost and expenses thereof; and after deducting such costs and expenses, pay over the remainder of such recoveries to the state treasurer and account for the same with the comptroller. He shall account and settle with the comptroller annually on or before October fifteenth, for all moneys received by him by virtue of his office during the next preceding fiscal year, and shall specify in his accounts the sums

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respectively paid by him to all contractors, agents and employees of every description employed on the canals and paid by him to all other persons having received compensation for damages; and the names of such persons and the amounts received by them respectively shall annually be reported by the comptroller to the legislature.

This is section 24 of the original Canal Law of 1894.

§ 35. Powers with reference to railroad near the canals.— The superintendent of public works shall have a general supervisory power over so much of any railroad as passes over any canal or feeder belonging to the state, or approaches within ten rods thereof, so far as may be necessary to preserve the free and perfect use of such canals or feeders, or for making any repairs, improvements or alterations thereupon. No railroad corporation shall construct its railroad over or at any place within ten rods of any canal or feeder belonging to the state, unless it submits to the superintendent of public works a map, plan and profile of such canal or feeder and of the route designated for its railroad, exhibiting distinctly and accurately the relation of each to the other at all the places within the limits of ten rods thereof, and obtains the written permission of the superintendent of public works and of the canal board for the construction of such railroad, with such condition, directions and instructions as in his judgment the free and perfect use of any such canal or feeder may require. Whenever any street railroad shall cross over any bridge spanning a canal, or canal feeder, the company owning, maintaining and operating the same shall be deemed liable for and shall pay all damages that may occur or arise, either to the state or to individuals, by reason of its laying and maintaining its tracks or rails over, upon and across any such bridge, or by reason of the operation of its cars over the same; and any such company shall upon demand of the superintendent of public works, make any repairs to such structure to insure the continued safety thereof as shall have been rendered necessary by reason of such use of said structure by said company. Any company so maintaining or operating a street railroad over, upon and across any such bridge shall indemnify the state against any and all loss, damages or claims for damage, for injuries to person or property of passengers which shall be incurred by or made against such

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state by reason of the operation of such railroad over any such bridge, and the superintendent of public works may, in his discretion, require any company so maintaining or operating a street railroad to furnish a bond, with sureties to be approved by him, to indemnify the state from all such loss, damage or claims. All such permits heretofore or hereafter granted shall be revocable whenever the free and perfect use of any such canal or feeder may so require, or if such railroad company shall fail to make any such repairs when required by the superintendent of public works. The railroad company using or occupying any bridge over the same shall, within a reasonable time after the service upon it, by the superintendent of public works, of written notice of such revocation, or to make such repairs, remove at its own cost and expense its railroad from such bridge and from the limits of ten rods of said canal or feeder.

This is substantially section 25 of the original Canal Law of 1894, as amended by L. 1902, ch. 340.

Railroad companies whose tracks cross any canals may lay out a new line to cross such canals at a more favorable grade. Railroad Law, § 13.

Tramways crossing state canals must be so constructed as not to interfere with the free use and navigation thereof. Transportation Corporations Law, § 33.

No pipe line shall be constructed upon or across any state canals, except by the consent of and in the manner prescribed by the superintendent of public works. Transportation Corporations Law, § 44.

Supervision of superintendent over railways.— The superintendent of public works has a general supervision over all railways passing over any canal or canal feeders of the state, or which approach within ten rods thereof. Op. Atty.-Gen. (1895) 128.

Application of section to street railways.— A street railway corporation is a railroad corporation within the meaning of the section. Op. Atty.-Gen. (1907) 336.

Revocable permit to railroad company.— The superintendent and the canal board may grant a revocable permit to a railroad company to occupy canal lands. Op. Atty.-Gen. (1913) 435; Op. Atty.-Gen. (1910) 550.

Construction of railroad bridge over canal.— The construction of a railroad bridge over a canal, and an agreement by state officials to convey land to the railroad company in exchange for its old right of way, is valid, and violates no constitutional provision. People v. Walsh, (1914) 211 N. Y. 90, 105 N. E. 136, reversing 159 App. Div. 252, 144 N. Y. S. 367.

License to lay tracks on canal lands.— A license or privilege may be given to a railroad company to construct its tracks and operate its cars upon canal lands, but nevertheless under the direction of the state authorities. McCarty v. New York Cent., etc., R. Co., (1902) 73 App. Div. 34, 76 N. Y. S. 321. The superintendent of public works may issue permits to railroad companies to cross or approach within ten rods of state canal lands. Op. Atty.-Gen. (1911) 181; Op. Atty.-Gen. (1907) 336.

Failure to obtain permit to construct tracks.— The failure of a railroad company to obtain permission to construct its tracks within ten rods of a canal or canal feeder does not bar its claim for damages to a road constructed

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within the ten-rod limit. New York Cent., etc., R. Co. v. State, (1899) 37 App. Div. 57, 55 N. Y. S. 685.

Change in location of bridges and tracks caused by barge canal improvements.— The entire barge canal is an alteration and improvement of the existing canals, and railroad companies crossing upon bridges must at their own expense erect and maintain new bridges over the new location, subject to the conditions, directions and supervision of the superintendent of public works. Op. Atty.-Gen. (1908) 276; Op. Atty.-Gen. (1910) 550. If a railroad company contends that it is entitled to compensation equivalent to the cost of new bridges, its rights will be preserved by the Court of Claims. Op. Atty.-Gen. (1910) 550. A railroad company must at its own expense make such changes in its tracks as are reasonably necessary to conform to the alteration and improvement of the barge canal. Op. Atty.-Gen. (1908) 276.

Bond to indemnify state against damages.— The superintendent of public works may require, as a condition to the granting of a permit, a bond to indemnify the state against any damages resulting from the construction, operation and maintenance of bridges or railroads. Op. Atty.-Gen. (1905) 468; Op. Atty.-Gen. (1905) 469.

§ 36. Duties of superintendent of repairs.— Every superintendent of repairs shall be under the direction of the superintendent of public works, and especially of the assistant superintendent having charge of the line of the canal on which he is employed. Before entering on his duties he shall execute and file in the office of the superintendent of public works an official undertaking in sum and form to be approved by the superintendent of public works. He shall, under the direction of the superintendent of public works or assistant superintendent, keep in repair such section of the canals and works and buildings connected therewith committed to his charge, and faithfully expend and account for all moneys placed in his hands by the superintendent of public works, or the assistant superintendent. At least once in thirty days he shall render an account of his receipts and expenditures to the superintendent of public works. The assistant superintendent having charge of that part of the canal on which a superintendent of repairs is employed, or the superintendent of public works, shall certify upon every account presented by any such superintendent of repairs and before its approval by the comptroller, that he has examined the same, that the several disbursements specified therein were made upon the canal, under the direction of such assistant superintendent or the superintendent of public works, or were for repairs necessary to be made thereon, and that he believes such disbursements to be proper and reasonable, and to have been made as charged.

This is section 26 of the original Canal Law of 1894, as amended by L 1906, ch. 257.

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Character of duties.— The superintendent of repairs acts ministerially, and although he has discretion as to the manner of performing his duties, he is not entitled to the immunity of a judicial officer. Hicks v. Dorn, (1870) 9 Abb. Pr. N. S. 47.

Liability for damages.— The superintendent of repairs is liable for damages occasioned by his neglect properly to perform his duties. Garlinghouse v. Jacobs, (1864) 29 N. Y. 297; Adsit v. Brady, (1843) 4 Hill 630, 40 Am. Dec. 305. Although he is an agent of the state, he is personally liable for damages to an individual resulting from the negligence of workmen employed by him in making repairs. Shepherd v. Lincoln, (1837) 17 Wend. 250. He is personally liable for damages caused by neglect to make imperative repairs, as where navigation is interrupted by any obstruction, or by the destruction of any bank or structure. Griffith v. Follett, (1855) 20 Barb. 620.

Any public officer, whose duties are not judicial, is answerable in damages to one injured by the careless or negligent performance of, or omission to perform, the duties of his office. Hover v. Barkhoof, (1870) 44 N. Y. 113; McCarthy v. Syracuse, (1871) 46 N. Y. 194; Rochester White Lead Co. v. Rochester, (1850) 3 N. Y. 463, 53 Am. Dec. 316.

Liability of contractor for negligence.— A contractor engaged in repairing canals is liable in damages to a person injured by his negligence or by the nonperformance of his duties. Fulton Fire Ins. Co. v. Baldwin, (1868) 37 N. Y. 648; Robinson v. Chamberlain, (1866) 34 N. Y. 389, 90 Am. Dec. 713.

§ 37. **Advances to superintendent of repairs.**— No advance of money shall be made to a superintendent of repairs until he makes out a detailed statement in such form as the superintendent of public works prescribes, of the several proposed objects of expenditures upon the line of the canal under his charge, covering a period of one month. The superintendent of public works or the assistant superintendent in charge shall indorse upon such statement or append thereto his allowance or disallowance of each particular object of expenditure named therein, or if he considers the sum estimated for any object or work excessive, the amount which in his judgment may be required for such work or object. When such estimates are filed in the office of the superintendent of public works, the superintendent of public works may make advances thereon, in order to meet the authorized disbursements, not exceeding the amount approved in said estimates. Every such superintendent of canal repairs shall apply the sums so advanced exclusively to the work or object named in the estimate for the expenditure and approved by the superintendent of public works or the assistant superintendent of public works.

This is section 27 of the original Canal Law of 1894, as amended by L. 1906, ch. 257. Since its incorporation in the Consolidated Laws it has been further amended by L. 1909, ch. 240. The latter amendment corrected a clerical error by changing the word "approval" to "approved" in next to last line of the section.

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§ 38. **Monthly abstracts of disbursements of superintendent of repairs.**— Every superintendent of repairs, or officer on whom the duties of such superintendent devolve, shall, on or before the twentieth day of each month, publish in the entire weekly edition of a newspaper published in a county through which the section of the canal in his charge passes, located on the line of such section, or in the county of his residence, if possible, an abstract, in such form as the comptroller prescribes, of his official disbursements during the preceding calendar month, stating the name and residence of every person to whom he has paid money; the amount paid to each; if for labor, the number of days and the amount per day; if for material, the kind, quantity and price, and the tools and implements purchased, if any. Such abstracts shall be verified by the oath of such superintendent, and a duplicate thereof filed in the office of the clerk of the county in which he resides, and shall be open to the inspection of the public during office hours. The expense of such publication, not exceeding the legal rates allowed for the publication of the session laws in such county, may be included in the monthly abstract of such superintendent and paid in the same manner and upon like vouchers as his other disbursements and expenses are audited and paid. The form and manner of such publication may be prescribed by the comptroller and the expense of publication shall be determined and approved by him.

Immediately after the publication and filing of such abstract, the superintendent shall transmit to the comptroller a certificate, in the form prescribed by the comptroller, that the same has been published and filed as required by law, and shall state therein the aggregate amount of the abstract.

This is section 28 of the original Canal Law of 1894.

§ 39. **Police powers.**— The superintendent of public works, deputy superintendent, each assistant superintendent, foreman of sections or lock-tender has all the authority of a peace officer with a warrant, to arrest any person engaged in the commission of a crime affecting any of the canals, or any person whom he has reasonable cause to believe has committed such crime; and shall forthwith take the person so arrested before any magistrate of the county within which the crime is committed, to be dealt with according to law.

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This is section 29 of the original Canal Law of 1894.

Penal Law.— Delivering false bill of lading to canal collector. Penal Law, § 460. False entry of weight of canal boat. Penal Law, § 461. Canal officer concealing frauds upon revenue. Penal Law, § 462. Wilful injuries to canals. Penal Law, § 463. Drawing water from canals. Penal Law, § 464. Canal officer accepting bribe to allow water to be drawn from canal. Penal Law, § 465. Keeping gambling apparatus on canal boat. Penal Law, §§ 971, 985, 986.

§ 40. Administration of oaths by clerks and special agents.— The superintendent of public works may designate two clerks in the office of the superintendent in the city of Albany, one clerk in the office of each assistant superintendent in the three divisions of the canals, and one or more special agents in the department of public works, each of whom upon filing his signature with the comptroller of the state, and his oath of office with the clerk of the county in which he resides, may administer oaths and take acknowledgments in any county of the state, in matters pertaining to canal business only, in which oaths and acknowledgments may be required to be taken, with the like force and effect as though taken before a notary public in the county where administered, but without fee or compensation therefor.

This is section 30 of the original Canal Law of 1894.

§ 41. Exemption of canal officers from arrest in civil actions. — Neither the superintendent of public works nor any assistant superintendent or deputy, superintendent of repairs, lock-keeper or other public officer employed upon or in charge of the canals, shall be liable to arrest or to be held to bail in any civil action for any act done or omitted to be done by him in the exercise of his official duties, nor be subject to military duty while actually engaged in their respective employments upon the canals, while the same are navigable.

This is section 31 of the original Canal Law of 1894.

Exemption from military service, see MILITARY LAW, § 1.

Exemption from jury service.— A superintendent, engineer or collector employed on a state canal is exempt from jury service. Judiciary Law, § 546.

§ 42. Ineligibility to appointment on the canals.— No person owning any hydraulic works dependent upon the canals for their supply of water or employed in or connected with any such works, or engaged in transporting property upon the canals, or owning

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or interested in boats navigating the same, shall be employed as a superintendent, lock-keeper or otherwise upon the canals.

This is section 32 of the original Canal Law of 1894.

Application of section.— This section applies to all individuals and corporations who are dependent upon canals or canal feeders for their water supply. Wright v. Eldred, (1887) 46 Hun 12, 11 N. Y. St. Rep. 73; Shaver v. Eldred, (1889) 114 N. Y. 236, 21 N. E. 411, reversing 38 Hun 632.

§ 43. Canal officers not to be interested in boats, contracts or hydraulic works.— No public officer or appointee connected with the care or management of the canals shall be interested in any hydraulic works dependent upon the canals for a supply of water, or in any line of boats regularly navigating the canals, or either directly or indirectly in any contract on the canals as a contractor, surety or otherwise, in his own name or in the name of any other person, or either directly or indirectly derive any benefit from the ordinary or extraordinary expenditures upon the canals, beyond his established compensation; or if any such officer or appointee shall, at any time, while holding such office or appointment, be or become so interested or derive any such benefit, he shall forfeit his office or appointment, and be discharged therefrom, and any contract in contravention hereof shall be void.

This is substantially section 33 of the original Canal Law of 1894, the only change being the elimination of the words "such contract" and the substitution in their place of the words "any contract in contravention hereof" near the close of the section. The Board of Statutory Consolidation in their report (1907) at p. 401 stated the need for the change in the following language: "It will be noted that the matter contained in this section does not refer to any contract. The change is made to make the context clear and logical."

Penal Law.— Auditing and paying fraudulent claims against the state. Penal Law, § 1863. Public officers not to be interested in sales, leases or contracts. Penal Law, § 1868.

§ 44. Delivery of property upon discharge of employees.— Every agent, collector, lock-keeper or superintendent employed upon any canal and occupying any house, office, building or land belonging thereto, who is discharged from his employment, and the wife and family of every such person who dies in such employment, shall deliver to the superintendent of public works or to a person designated by him, the possession of the premises so occupied, and of all books, papers, matters or things belonging to the canals acquired by virtue of such employment, within seven days after a notice is served for that purpose by the superintendent or an assistant superintendent of public works. In case of a

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refusal or neglect to make such delivery, any justice of the peace in the county where such premises are situated, may, on application, issue his warrant, ordering any peace officer, with such assistance as may be necessary, to enter, in the day time, upon the premises so occupied and remove therefrom all persons found in possession thereof, and to take into his custody all books, papers, matters and things there found belonging to the canals, and deliver the same to the superintendent of public works or to some person designated by him, and such officer shall execute such warrant accordingly.

This is section 34 of the original Canal Law of 1894.

§ 45. **Canada thistles and other noxious weeds on the banks of canals to be cut.**— The superintendent of public works shall cause all Canada thistles and other noxious weeds, growing upon the banks and sides of the canals, to the width owned by the state, to be cut down twice in each year, once between the fifteenth day of June and the first of July and again between the fifteenth day of August and the first of September. If such thistles or noxious weeds are not cut down, any person may cut the same between the first and fifteenth days of July and the first and fifteenth days of September of each year at the expense of the assistant superintendent having charge of the division upon which such thistles and noxious weeds are so cut, at the rate of one dollar per day for the time occupied in cutting.

This is section 35 of the original Canal Law of 1894.

§ 46. **Commissioners of the canal fund to allow claims.**— The commissioners of the canal fund may allow claims for moneys paid by the superintendent of public works or an assistant superintendent or an officer or person employed by them, or in the engineer department of the canals, in the care, management, superintendence and repair thereof, for judgment recovered against them or any of them, in any action instituted for any act done by them, pursuant to the provisions of this chapter, or for costs and expenses incurred in such action, or in an action instituted by them or any of them under such chapter. Before allowing a claim, the commissioners shall examine into the circumstances under which such costs and expenses were incurred, or

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judgments recovered, and shall allow such claim or such part thereof as they deem reasonable, if satisfied that the officer or person making the same has been subjected to such costs, expenses or judgments, while acting in good faith in the discharge of his duty under a law of the state. The commissioners, in their discretion, may direct the attorney-general or employ other counsel to take all necessary steps to defend the interest of the state in actions and proceedings arising under the laws respecting the canals, or from the appraisement of damages thereon.

This is substantially section 36 of the original Canal Law of 1894.
The commissioners of the canal fund are the lieutenant-governor, secretary of state, state treasurer and the attorney-general. Const., art. 5, § 5.

§ 47. Claims for damages.— There shall be allowed and paid to every person sustaining damages from the canals or from their use or management, or resulting or arising from the neglect or conduct of any officer of the state having charge thereof, or resulting or arising from any accident, or other matter or thing connected with the canals, the amount of such damages to be ascertained and determined by the proper action or proceedings before the court of claims; but no judgment shall be awarded by such court for any such damages in any case unless the facts proved therein make out a case which would create a legal liability against the state, were the same established in evidence in a court of justice against an individual or corporation; but the superintendent of public works may make settlement of any such claim in any case where the amount thereof does not exceed the sum of five hundred dollars, but no such settlement shall be effective against the state until the same has been approved by the attorney-general and the canal board; provided that the provisions of this section shall not extend to claims arising from damages resulting from the navigation of the canals.

Neither the comptroller nor the commissioner of the canal fund shall pay any damages awarded, or the amount of any commutations agreed on for the appropriation of land or water, or for the erection of a farm bridge, until a satisfactory abstract or title and certificate of search as to incumbrances is furnished, showing the person demanding such damages or commutations to be legally entitled thereto, which abstract and search shall be filed in the office of the comptroller.

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The subject matter of this section was section 37 of the original Canal Law of 1894. That section was amended by L. 1899, ch. 280. Since its incorporation in the Consolidated Laws it has been amended by L. 1915, ch. 494. Before this amendment the section read as follows:

"There shall be allowed and paid to every person sustaining damages from the canals or from their use or management, or resulting or arising from the neglect or conduct of any officer of the state having charge thereof, or resulting or arising from any accident, or other matter or thing connected with the canals, the amount of such damages to be ascertained and determined by the proper action or proceedings before the court of claims; but no judgment shall be awarded by such court for any such damages in any case unless the facts proved therein make out a case which would create a legal liability against the state, were the same established in evidence in a court of justice against an individual or corporation; provided that the provisions of this section shall not extend to claims arising from damages resulting from the navigation of the canals.

"Neither the comptroller nor the commissioner of the canal fund shall pay any damages awarded, or the amount of any commutations agreed on for the appropriation of land or water, or for the erection of a farm bridge, until a satisfactory abstract of title and certificate of search as to incumbrances is furnished, showing the person demanding such damages or commutations to be legally entitled thereto, which abstract and search shall be filed in the office of the comptroller."

The legislature shall neither audit nor allow any private claim or account against the state. Const., art. 3, § 19.

The legislature or the canal board shall not audit, allow or pay any claim which, as between citizens of the state, would be barred by lapse of time. Const., art. 7, § 6; Coxe v. State, (1895) 144 N. Y. 396, 39 N. E. 400; O'Hara v. State, (1889) 112 N. Y. 146, 19 N. E. 659, 8 A. S. R. 726, 2 L. R. A. 603.

For a history, analysis and construction of statutes relating to quasi-judicial bodies, established to hear, audit and determine private claims against the state, see People v. Luce, (1912) 204 N. Y. 478, 97 N. E. 850, Ann. Cas. 1913C 1151.

I. Scope of statute.
II. The Court of Claims.
III. Liability of the state.
IV. Personal injuries.
V. Property damages.
VI. Statute of limitation.

I. Scope of Statute.

Intent of section.— The statute does not confer a new jurisdiction to hear claims against the state for the taking of a fee in lands, or for the appropriation of a continuous and permanent easement therein for canal purposes, but was intended to supplement and extend existing jurisdiction by adding authority to hear and determine new cases, for which existing legislation afforded no remedy; and the cases that fall generally within the statute are for damages arising from the canals themselves, their use and management, or the negligence and conduct of officials in matters connected therewith. Benedict v. State, (1890) 120 N. Y. 228, 24 N. E. 314; Stewart v. State, (1887) 105 N. Y. 254, 11 N. E. 652; Mark v. State, (1885) 97 N. Y. 572; Heacock v. State, (1887) 105 N. Y. 246, 11 N. E. 638.

A claim for the impairment of a ferry right, caused by the original appropriation for canal purposes, was held untenable under this section, as such impairment was an incident of the appropriation, and could not be presented as a separate and distinct claim. Mack v. State, (1885) 97 N. Y. 572.

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II. The Court of Claims.

Jurisdiction generally.— The Court of Claims is not mentioned by name in the constitution, but it has a constitutional existence, and is lawfully authorized to determine claims against the state. Coxe v. State, (1895) 144 N. Y. 396, 39 N. E. 400; Cole v. State, (1886) 102 N. Y. 48, 6 N. E. 277; Taylor v. State, (1910) 124 N. Y. S. 818. The court has only such powers as are conferred upon it by statute, and has no jurisdiction to pass upon conflicting titles to real property. People v. Sohmer, (1914) 163 App. Div. 830, 149 N. Y. S. 276. It has no jurisdiction to pass upon disputes between citizens, which are triable in the ordinary constitutional courts. Moroney v. State, (1910) 67 Misc. 58, 124 N. Y. S. 824. Nor has it jurisdiction to pass upon the necessity for taking lands for canal purposes, and it can only determine what interest and how much has been appropriated, as is necessary in order to determine the amount of the award. People v. Fisher, (1906) 116 App. Div. 677, 101 N. Y. S. 1047, affirmed 190 N. Y. 468, 83 N. E. 482.

A ditch used by the state to convey surplus waters of the Erie canal into Oneida lake is part of the canal system, and an action for damages caused by the widening and deepening thereof may be brought in the Court of Claims, without any legislative authority. Lenox v. State, (1908) 61 Misc. 28, 114 N. Y. S. 744.

The Court of Claims has jurisdiction under the Barge Canal Act to determine the amount of compensation for lands, structures and waters taken by the state. Laws of 1903, ch. 147, § 4, as amended by Laws of 1906, ch. 365; Laws of 1908, ch. 196; Laws of 1909, ch. 273; James Frazee Mill. Co. v. State, (1911) 73 Misc. 529, 131 N. Y. S. 23.

Requisites of judgment.— Where a claim arises in which the state seeks to appropriate or has appropriated land for a public use, the judgment of the Court of Claims therein must contain a description of such land, and if a continuous easement and not the fee is taken, it should be so stated in the judgment. Code Civ. Pro., § 269; People v. Fisher, (1908) 190 N. Y. 468, 83 N. E. 482, affirming 116 App. Div. 677, 101 N. Y. S. 1047.

When award will be set aside.— An insufficient award cannot be interfered with by the Court of Appeals, unless upon the uncontradicted evidence, affected by no question of credibility, the award was inadequate, or where in ascertaining the damages a wrong principle was adopted. Slavin v. State, (1897) 152 N. Y. 45, 46 N. E. 321.

Where the Appellate Division has unanimously affirmed a judgment entered upon a decision of the Court of Claims, the Court of Appeals may assume that the findings made by the Court of Claims were supported by the evidence. Where it appears, however, that such findings are incomplete and do not sustain the judgment, but there is evidence which would have warranted the Court of Claims in making findings, in addition to those made, which would be sufficient to sustain the judgment, it is the duty of the Court of Appeals to infer or assume such findings in support of the judgment. Ostrander v. State, (1908) 192 N. Y. 415, 85 N. E. 668, affirming 126 App. Div. 938, 110 N. Y. S. 1139.

Procedure.— One who brings suit against the state must observe the strict rules of procedure. Gates v. State, (1891) 128 N. Y. 221, 28 N. E. 373; Benedict v. State, (1890) 120 N. Y. 228, 24 N. E. 314. The Condemnation Law, allowing costs and disbursements, in proceedings to condemn real property, does not apply to the Court of Claims in its determination of a claim for land taken by the state. Brainerd v. State, (1911) 74 Misc. 100, 131 N. Y. S. 221.

As to procedure in the Court of Claims generally, see Code Civ. Pro., §§ 263–280.

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III. Liability of the State.

The state can only be sued by its own consent for liabilities which it chooses to assume, and whoever presents a claim against it must show some statute involving the consent of the state to be answerable before its own tribunals for such claim, or those of a class to which it belongs; and the liability of the state under this section extends only to such claims as are expressly, or by fair implication, included within the language of the statute. Locke v. State, (1894) 140 N. Y. 480, 35 N. E. 1076; Rexford v. State, (1887) 105 N. Y. 229, 11 N. E. 514; Lewis v. State, (1884) 96 N. Y. 71, 48 Am. Rep. 607; Sipple v. State, (1885) 99 N. Y. 284, 1 N. E. 892, 3 N E. 657; Splittorf v. State, (1888) 108 N. Y. 205, 15 N. E. 322; Ballou v. State, (1888) 111 N. Y. 496, 18 N. E. 627. "The state assumes liability for damages arising from the use and management of the canals, or from the negligence or conduct of its officers having charge thereof, or from any accident 'or other matter or thing connected' with them. It is not essential to a recovery under the act that the damages should be caused by the negligence of such an officer; but if the same were occasioned by 'any accident or other matter connected with the canals,' or from their 'use or management,' no matter what the immediate cause may be, its express terms authorize an award, provided under similar circumstances the law would adjudge a liability against an individual or corporation. The act was conceived in the plainest principles of justice, and was intended to afford a substantial and not a delusive remedy to parties who might be injured by the careless and negligent conduct of those who were intrusted by the state with the execution of its work. The canal was a state enterprise and was managed and controlled by its servants, and reason and justice require when it engages in public enterprises from which a revenue is expected to be derived, and in the prosecution of which private property is required to be taken, and individual interests jeopardized, that it should compensate those whose property rights are thereby invaded. The object in view was the protection of the citizen, and not the exemption from liability of the state; and it is quite evident that the state thereby intended to assume, with reference to the management of the canals, the same measure of liability incurred by individuals and corporations engaged in similar enterprises, and to afford to parties injured the same redress which they would have against individuals and corporations for similar injuries. The use of the terms 'the negligence or conduct of any officer of the state having charge thereof' was obviously descriptive, and intended to embrace all those persons in the employ of the state intrusted with the performance of duties relating to the canals, and from a neglect or omission to perform which damages might occur to individuals. It is unreasonable to suppose that the state intended to confine its liability to cases arising from the negligence of those officers only having the duty of general supervision to perform, and deny relief in cases where damages arose from the neglect of others having practical control of its operations." Ruger, Ch. J., in Sipple v. State, (1885) 99 N. Y. 284, 1 N. E. 892, 3 N. E. 657.

Under this section the personal representatives of a deceased person, whose death is alleged to have been caused by negligence, are entitled to the allowance of a claim, where in case the negligent act causing the death had been chargeable to an individual or corporation an action could be maintained under section 1902 of the Code of Civil Procedure. Bowen v. State, (1888) 108 N. Y. 166, 15 N. E. 56; Splittorf v. State, (1888) 108 N. Y. 205, 15 N. E. 322.

"An individual or corporation."— The term "an individual or corporation," as used in this section, includes a town. O'Bryan v. State, (1910) 68 Misc. 618, 125 N. Y. S. 490, reversed on other grounds 148 App. Div. 542, 132 N. Y. S. 1096.

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IV. Personal Injuries.

Defective bridges.— It is the primary duty of the state to keep canal bridges in proper repair and in a safe condition. People v. Syracuse Rapid Transit R. Co., (1909) 129 App. Div. 800, 114 N. Y. S. 776. An unguarded passway over a state canal bridge was held sufficient to show the plaintiff's freedom from contributory negligence, and that the state was liable for damages to one injured by falling therefrom. Miller v. State, (1914) 161 App. Div. 891, 145 N. Y. S. 323.

The state cannot recover damages paid by it for personal injuries caused by the collapse of a bridge maintained over a canal by a street railway company, even though by the terms of the license the company was to be liable for all damages occasioned by the operation of its road over said bridge. People v. Syracuse Rapid Transit R. Co., (1909) 129 App. Div. 800, 114 N. Y. S. 776.

The state is liable for damages for personal injuries occasioned by a fall from a defective bridge constructed by it over an abandoned portion of a canal. Woodman v. State, (1891) 127 N. Y. 397, 28 N. E. 20.

One using a footbridge, in the process of reconstruction, over a state canal, cannot assume that it is as safe as a completed bridge, and the state is not liable for damages, where reasonable care under the circumstances was not exercised by the person using the bridge. White v. State, (1911) 128 N. Y. S. 606.

Injuries occurring on state lands.— The state is not liable to a person injured while upon land used as a canal feeder, as such land cannot become the subject of any grant for highway purposes. Donahue v. State, (1889) 112 N. Y. 142, 19 N. E. 419, 2 L. R. A. 576.

The state, maintaining a sluiceway upon state lands, is under no obligation to guard the same as against the owner of adjoining land, or any person upon his land; and a claim by an occupant thereof for injuries sustained by falling into an unguarded sluiceway on state land was properly dismissed. Carroll v. State, (1912) 153 App. Div. 514, 138 N. Y. S. 442.

V. Property Damages.

Leakage and overflow.— It is incumbent upon the state to prevent leakage or other wastage to a more than fair and reasonable extent. Silsby Mfg. Co. v. State, (1887) 104 N. Y. 562, 11 N. E. 264; Crowley v. State, (1904) 90 App. Div. 613, 85 N. Y. S. 1027. "The question would not probably be, has the state used no more water than was absolutely necessary for the purposes of navigation, and have its gates and locks been kept up to the highest state of efficiency and in the best possible repair, and have the most effective appliances been used to guard against the leakage of water, but the inquiry would be whether, taking the whole facts into consideration, all the circumstances surrounding the case, the state had done what was fairly and reasonably incumbent upon it to do in the use of the water for navigation purposes, and in the prevention of leakage, or other wastage, to a more than fair and reasonable extent." Silsby Mfg. Co. v. State, (1887) 104 N. Y. 562, 11 N. E. 264.

The state is liable for injury to property from the overflow caused by the erection or rebuilding of a state dam. Shaver v. Eldred, (1889) 114 N. Y. 236, 21 N. E. 411; Benedict v. State, (1890) 120 N. Y. 228, 24 N. E. 314 So where upon the trial of a claim for an unlawful diversion by the state of the waters of a river, it appeared that, on account of defects in the locks, gates and walls of a canal, more water was diverted from the river than the superintendent of public works, in the exercise of his discretion, required for the use of the canal, and that if said structures had been in a condition not

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to leak, the claimant would have had the use of a portion of the surplus water so diverted, it was held that he had made out a case which would have created a legal liability as against an individual, and was entitled to damages. Silsby Mfg. Co. v. State, (1887) 104 N. Y. 562, 11 N. E. 264.

Although the state may have an easement giving it a right to discharge surplus waters from a canal into the channel of a natural stream, in exercising such right it must use reasonable care not to precipitate large quantities of water into such stream so as to overflow and injure the lands of private owners, and when it appears that the overflow of such lands was caused by the sudden opening of the gates of the canal at periods when there were no unusual storms, and that had the gates been opened gradually no overflow would have occurred, the state is liable for the damage caused. Adkinson v. State, (1906) 114 App. Div. 249, 99 N. Y. S. 792, affirmed 187 N. Y. 566, 80 N. E. 1104. And upon the prosecution of a claim against the state for damages for overflowing the claimant's lands, where it appears that the overflow was caused by discharging waters from a canal into a creek running through claimant's lands, the state is liable for the damages occasioned thereby; and although it appears that the creek was swollen by heavy rains, if it does not appear that without the water discharged from the canal the claimant's lands would not have been overflowed, the state is liable for all the damage. Carhart v. State, (1908) 61 Misc. 13, 114 N. Y. S. 544. The state is likewise liable for damages caused by flooding lands, where it appears that canal waste weirs were in a defective condition, and that the waste weir tenders were negligent in the performance of their duties during a violent rain storm. Crowley v. State, (1904) 99 App. Div. 52, 90 N. Y. S. 496.

When damage to lands is caused partly by the negligence of state employees in discharging water from a canal aqueduct and partly by the unavoidable overflow from such aqueduct caused by excessive rains, the state is not liable for the whole damage, but only for the part thereof caused by the negligence of its employees; and this the claimant must affirmatively prove. Carhart v. State, (1906) 115 App. Div. 1, 100 N. Y. S. 499. When the state attempts to prove the amount of unavoidable damage caused by rains on mere expert testimony founded upon calculations of rainfall in other localities, the evidence is incompetent, being too remote, for the rainfall in different localities is not necessarily the same. Carhart v. State, (1906) 115 App. Div. 1, 100 N. Y. S. 499. But it has been held that evidence may be allowed with reference to the prevalence of heavy rain storms at some distance from the claimant's land, and while such evidence may be somewhat remote it is not inadmissible or incompetent as a matter of law. Ostrander v. State, (1908) 192 N. Y. 415, 85 N. E. 668, affirming 126 App. Div. 938, 110 N. Y. S. 1139.

The amount of damages recoverable from the state for injury to a building caused by leakage from a canal, cannot be limited to the actual outlay made by the claimant in the partial restoration of the building, but should include the entire expense necessary to restore the building in a reasonable manner, and, in addition thereto, any loss of rental value during the time required to make necessary repairs. Slavin v. State, (1897) 152 N. Y. 45, 46 N. E. 321; Connor v. State, (1897) 152 N. Y. 49, 46 N. E. 1145. But it has been held that a claimant is not entitled to recover, in addition to the cost of repairs and loss of rent, the amount of the decrease in value of the property. Stevens v. State, (1909) 65 Misc. 240, 121 N. Y. S. 402. Where farm lands were flooded because of the defective construction of a canal embankment, the state was held liable for the loss of the use thereof, in addition to the cost of reclaiming such lands and placing them in proper condition for cultivation. Sayre v. State, (1890) 123 N. Y. 291, 25 N. E. 1163.

The state is liable for damages occasioned by its employees in charge of a waste weir on a canal feeder, who were negligent in failing to control the volume of water during a heavy rain storm. Shannahan v. State, (1901)

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57 App. Div. 239, 68 N. Y. S. 131. It is the duty of the state to provide sufficient openings in an aqueduct to carry off the flow of water during the annual spring freshet, especially when it appeared that the superintendent had notice that the closing of one of the openings would cause a flood. Greeley v. State, (1904) 94 App. Div. 605, 88 N. Y. S. 468.

Where a break occurred in the Erie canal, caused by the negligence of state agents, it was held that the state was liable to a town whose bridges were injured thereby. Bidelman v. State, (1888) 110 N. Y. 232, 18 N. E. 115, 1 L. R. A. 258. So the state is liable for the negligence of the superintendent of a canal division in failing to remove an ice jam, which resulted in a flood and damage to adjoining property. Whitestoun v. State, (1911) 148 App. Div. 582, 132 N. Y. S. 824.

In constructing the Genesee Valley canal the channel of a river was changed, and a guard bank was erected parallel with the new channel; but the bank was not kept in repair, and during a heavy freshet it was broken through where it crossed the original channel. It was held that the state was under no liability to maintain the bank to protect lands which would have been flooded if the improvement had not been made. Stone v. State, (1893) 138 N. Y. 124, 33 N. E. 733.

Bridges.— The state cannot close a canal bridge forming part of a public highway, and arbitrarily and negligently omit to make repairs, without rendering itself liable to special damages occurring to the abutting owner on the highway, particularly if his property abuts upon the bridge. Kline v. State, (1905) 61 Misc. 18, 114 N. Y. S. 318.

Change of street grade.— An abutting owner is not entitled to damages caused by change of street grade, made necessary by a canal retaining wall. Warner v. State, (1909) 132 App. Div. 611, 117 N. Y. S. 108.

Deprival of access to railroad.— The state is not liable in damages to a corporation, whose lands are cut off from access to a railroad, through the appropriation of the railroad company's land for barge canal purposes. James Frazee Mill. Co. v. State, (1911) 73 Misc. 529, 131 N. Y. S. 23.

Subsequent improvements.— An appropriation of lands under or above water for canal purposes vests title in the state, and all claims for damages not presented within one year are barred by limitation; and a riparian owner, whose lands were taken, is not entitled to damages on account of subsequent improvements made on the state canal. Miller v. State, (1914) 164 App. Div. 522, 149 N. Y. S. 788.

Damages where values are increased by canal construction.— It has been held that no damages could be allowed where it was determined that the benefits conferred upon the owners of property by the construction of the canal were greater than the damages sustained by the appropriation of the land. Burbank v. Fay, (1875) 65 N. Y. 57; Whitney v. State, (1884) 96 N. Y. 240.

Damages caused by independent contractor.— The state is liable for the acts of an independent contractor who is engaged on canal improvement work. Haselo v. State, (1911) 73 Misc. 532, 131 N. Y. S. 26. But where a contract with the state provided that the work should be done so as not to interfere with the navigation of the canal, the defendant, being an independent contractor, cannot claim exemption from its negligent acts because no liability exists against the state or any of its officers or agents, as the liability exists independent of any agreement by the contractor to indemnify and save the state harmless from claims against it. Dunn v. Empire Engineering Corp., (1911) 147 App. Div. 237, 131 N. Y. S. 935, affirmed, 210 N. Y. 599, 104 N. E. 1129.

In an action against a contractor constructing a portion of a canal to recover for injuries caused to mules used for towing by a navigator on the canal, owing to the fact that in the night time they became mired in deep mud left upon the towpath by the defendant, who had failed to give warning

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of the dangerous condition by lights or signals, the evidence was held sufficient to warrant the jury in finding the defendant guilty of negligence and the plaintiff free from contributory negligence. Dunn v. Empire Engineering Corp., (1911) 147 App. Div. 237, 131 N. Y. S. 935, affirmed 210 N. Y. 599, 104 N. E. 1129.

Conclusiveness of damages allowed by canal appraisers.— Under a claim for damages presented to the board of claims, it was held that the determination of the canal appraisers was conclusive against any claim for the original taking and subsequent public use. Whitney v. State, (1884) 96 N. Y. 240.

Damages voluntarily caused.— One who has knowledge that the state is about to construct a canal system, and who leases property which he knows will be rendered of less value thereby, acts in bad faith towards the state, and only nominal damages will be awarded him. Champlain Stone, etc., Co. v. State, (1910) 66 Misc. 434, 123 N. Y. S. 546.

Damages resulting from navigation.— "The intention of the statute was to provide that parties while using the canal for their own benefit should take the risks of navigation without reference to whether they were caused or affected by the negligence of the state officers." The fact that a boat is not in motion is not conclusive on the question, as it has been held that the word navigation for some purposes includes a period when a vessel is not in motion, as for instance when she is at anchor. In this case it appeared that a canal boat arriving at her destination was tied up on the outside of another canal boat which was moored alongside the wharf of a coal yard. Before the cargo could be unloaded a break occurred in the state dam which operated to lower the water in the basin where the boat was to such an extent that she rested on the rock bottom and became a total loss. In an action for damages against the state it was held that the voyage had not ended as the cargo had not been delivered and therefore the case was within the exception of the statute that its provision should not extend to claims arising from damages resulting from the navigation of the canals. Zorn v. State, (1899) 45 App. Div. 163, 60 N. Y. S. 1037.

The statute can have no application to accidents or injuries befalling one not at the time engaged in navigation of the canals, and which did not result from that navigation, as "the language used contemplates a case in which the act of navigating is one of the concurring causes of the injury, so that the latter can be deemed a result." Accordingly, where a claimant, who was navigating a canal boat on the Erie canal, temporarily left the boat in order to obtain a clearance, and in attempting to rejoin the vessel was injured owing to a defective abutment of a canal bridge, it was held that the statute was broad enough to include the injury complained of, and that it did not result from "navigation of the canals," within the meaning of the exception, as he had for the time abandoned his boat, and another person was navigating it. Rexford v. State, (1887) 105 N. Y. 229, 11 N. E. 514.

Where the basis of a claim was that the claimant's intestate, while upon a canal boat passing under a bridge over a state canal, through the negligence of the agents or servants of the state operating the bridge, received injuries causing his death, it was held that such injuries resulted from "the navigation of the canals," and the claim was properly dismissed. Locke v. State, (1894) 140 N. Y. 480, 35 N. E. 1076.

VI. Statute of Limitation.

Claims barred.— The legislature has no power to confer jurisdiction upon the board of claims to allow or award a claim barred by the time limited by the general statutes in which to bring an action for damages for personal injuries resulting from negligence. Gates v. State, (1891) 128 N. Y. 221, 28 N. E. 373.

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Claims for damages caused by the appropriation of lands for canal purposes must be presented within one year from the time of making the appropriation. Benedict v. State, (1890) 120 N. Y. 228, 24 N. E. 314; Miller v. State, (1914) 164 App. Div. 522, 149 N. Y. S. 788.

Waiver of right to damages.— Under the Revised Statutes (1 R. S. 225, sec. 48), which required every person interested in lands appropriated for canal purposes, to make his claim for damages within one year after the appropriation, the omission to make the claim within the time specified constituted a waiver of all right to damages, and the state became vested with a complete title. Mack v. State, (1885) 97 N. Y. 572; Benedict v. State, (1890) 120 N. Y. 228, 24 N. E. 314.

When statute begins to run.— The statute does not begin to run, as to lands permanently appropriated, until the quantity taken has been determined, and its boundary lines described on the maps required to be made and filed, or marked upon the ground by monuments, in such a manner that the owner can ascertain the quantity and its boundaries. As to lands temporarily taken, the statute does not begin to run until the state has ceased to use the land. Yaw v. State, (1891) 127 N. Y. 190, 28 N. E. 829.

Continuous damage.— Under the provisions of the former Act of 1870 (ch. 321, Laws of 1870) limiting the time for filing claims against the state to two years from the time the damages accrued, when a claim was presented and proved for continuous damages, part accruing within the two years, the claimant was entitled to recover the damages so accruing; it is only such damages as accrued before that time which were barred by the statute. Folts v. State, (1890) 118 N. Y. 406, 23 N. E. 567.

§ 48. Electrical or other improved systems of towage.— The superintendent of public works may:

1. Designate or set aside such portions of the Erie canal as he deems expedient for experiments to test the efficiency, economy and practicability of devices offered for improving the present system of towage, by electrical or other means.

2. Prescribe such regulations to govern the conduct of such experiments as he deems requisite to prevent damage to the canal or any appurtenance or interference with the traffic thereof.

3. Authorize from time to time any person or corporation to construct, maintain and operate electric conductors for light, heat or power upon or along any canal on such terms and conditions not inconsistent with the public use of such canal as he approves.

4. In like manner contract for or permit the use of such light, heat or power upon any such canal, but not to create a charge against the state except against appropriations lawfully applicable thereto.

With the permission of the superintendent and subject to the regulations prescribed by him, and to his discretion and control, any citizen of the state or corporation authorized to transact business in the same, presenting to such superintendent a device for improving such method of towage may erect, at his or its own

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expense upon the portion of a canal designated for that purpose and upon state lands, such temporary buildings or other structures, with necessary machinery, and raise and temporarily maintain such poles along such canal and string wires thereupon as are necessary to test the efficiency, economy and practicability of such device.

This is section 38 of the original Canal Law of 1894.

Limitation of section.— The section is limited in its application to experimental tests of devices to improve the method of towage and navigation, and has no application to a device which has been tested and is sought to be put into active practical operation for profit. Op. Atty.-Gen. (1914) 104. The statute does not authorize any permanent appliance or structure, which, from its nature, control or management, will not afford equal advantages and opportunities to every citizen of the state who has occasion to use the canals. Op. Atty.-Gen. (1904) 228.

Permit to use towpaths for auto trucks.— The superintendent of public works has no authority to issue a permit to operate auto trucks or other towing devices upon the towpaths of the state canals. Op. Atty.-Gen. (1914) 104.

License to maintain towing and power plant.— An application by a corporation for an exclusive license to erect and maintain a towing and power plant on the Champlain canal was refused. Op. Atty.-Gen. (1904) 228.

Power to rent locks.— No state officer or board has authority to enter into a contract for the rental of a pneumatic lock for the use of a canal, nor to enter into any contractual relation with any person or corporation that will make the state only a contingent owner of any structure necessary for canal purposes. Op. Atty.-Gen. (1899) 177.

ARTICLE 5

State Engineer; Department of Canals

Section 60. Powers and duties of state engineer.
61. Division and resident engineers and assistants.
62. Division engineers; general duties.
63. Division engineers; duties as to maps, surveys and plans.
64. Advances to division engineers.
65. Accounts of division engineers.
66. Duties of resident engineers.
67. Assistant engineers.
68. Engineer's record of measurements.
69. Penalty for making false representations or estimates.

§ 60. **Powers and duties of state engineer.**— The state engineer shall:

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1. Have the general supervision of the engineer department of the canals and perform all duties in relation thereto required by the canal board or the superintendent of public works.

2. Visit and carefully inspect all the canals at least once in each year and make additional visits and examinations of the whole or any part thereof, and communicate such information and suggestions in relation to the improvement and maintenance thereof to the canal board or the superintendent of public works as he deems the public interests to require.

3. Appoint and at pleasure remove the division, resident and assistant engineers and all other persons employed to assist them.

4. Prescribe and define the duties of the engineers so appointed and assign each division and resident engineer to a division of the canals.

5. When construction or improvement work upon any of the canals is ordered by the legislature or the canal board, make or cause to be made all surveys, maps, plans, specifications and estimates required by the canal board or the superintendent of public works, for the purpose of determining the proper location of the line of the canal, or any part thereof, or otherwise necessary, preparatory to the commencement of such work. He shall transmit such surveys, maps, plans, specifications and estimates with his approval thereof to the superintendent of public works and the canal board and, if the same is adopted by such board, file the same in his office, and a copy thereof in the office of such superintendent. He shall also communicate to the canal board or such superintendent his opinion in writing as to the time when the public interests require such work commenced and the time when it should be completed, and also his opinion as to any maps, plans, profiles or estimates submitted to him by the superintendent preliminary to contracting for work.

6. Assign an engineer for service upon any portion of the canals undergoing repairs or upon any construction or improvement work, upon the requisition of the superintendent of public works. The state engineer and surveyor may designate two assistants in his office at Albany and one or more in the office of each of the three division engineers, each of whom upon filing his signature with the comptroller of the state and his oath of office with the clerk of the county in which he resides, may administer oaths and take acknowledgments in any county of the state, in

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matters pertaining to canal business only, in which oaths and acknowledgments may be required to be taken, with the like force and effect as though taken before a notary public in the county where administered, but without fee or compensation therefor.

7. Report annually to the legislature, on or before the first day of February, the number and compensation of the persons employed by him upon the canals during the preceding year, the number so employed upon each resident engineer's subdivision, the length and estimated cost of all work under construction, the amount done and remaining to be done under existing contracts for repairs in each subdivision and such other information and suggestions as, in his judgment, the public interests require.

Election of state engineer. Const., art. 5, §§ 1, 2. Compensation of the state engineer is not to be increased or diminished during his term of office, nor shall he receive any fees or other compensation. Const., art. 5, § 1. The state engineer is a commissioner of the land office, and a member of the canal board. Const., art. 5, § 5.

General statutory provisions relating to the duties of the state engineer are contained in the Executive Law, §§ 70–76.

General duties of state engineer.— The state engineer has general supervision of the engineering department of the canals, and performs all the duties required by the canal board or the superintendent of public works. When construction or improvement work is ordered by the legislature or the canal board, it is his duty to make surveys, maps, plans, specifications and estimates required by the canal board or the superintendent of public works, and to transmit the same to them for their approval; and no plans can be adopted except by the approval of the superintendent of public works and the canal board. Ontario Knitting Co. v. State, (1912) 205 N. Y. 409, 98 N. E. 909, affirming 147 App. Div. 316, 131 N. Y. S. 918, 69 Misc. 145, 125 N. Y. S. 57.

Judgment of state engineer as to lands necessary for canal purposes.— If the state engineer deems land necessary for canal purposes, his judgment is judicial and not ministerial, and he cannot delegate his power to a subordinate appointee, unless he is in plain terms authorized so to do by legislative enactment. Ontario Knitting Co. v. State, (1912) 205 N. Y. 409, 98 N. E. 909, affirming 147 App. Div. 316, 131 N. Y. S. 918, 69 Misc. 145, 125 N. Y. S. 57. It is entirely within the discretion of the state engineer to determine the necessity of taking any lands or waters, and to determine the quantity of lands required for canal improvements, and he is authorized to take such quantities of land as may be necessary, not only for the present uses of canal construction, but for its care, maintenance and protection in the future; and the determination of the quantity of lands necessary for such purpose is not subject to review by the courts. Op. Atty.-Gen. (1907) 340. He may not only determine the lands, structures and waters, but also the estate or interest therein, which may be required for the purpose of canal improvements. People v. Walsh, (1914) 211 N. Y. 90, 105 N. E. 136, reversing 159 App. Div. 252, 144 N. Y. S. 367.

Reliance upon estimates of state engineer.— The superintendent of public works has the right to rely upon the estimates made by the state engineer in the execution of a contract. People v. Roberts, (1900) 163 N. Y. 70, 57 N. E. 98, reversing 45 App. Div. 145, 61 N. Y. S. 148.

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Power to audit claims.— The power to audit claims against the fund appropriated to enlarge the canals was not taken from the comptroller and conferred upon the state engineer by the Laws of 1895, ch. 79, § 5, and Laws of 1896, ch. 794, which directed the superintendent of public works to pay contractors upon the certificate of the state engineer, as these are merely administrative duties necessarily conferred upon the state engineer, and are entirely consistent with the general practice of the state, which is to have the final audit made by the comptroller. People v. Roberts, (1900) 163 N. Y. 70, 57 N. E. 98, reversing 45 App. Div. 145, 61 N. Y. S. 148.

§ 61. Division and resident engineers and assistants.— Each engineer and appointee mentioned in this section shall take and file with the secretary of state the constitutional oath of office. The division and resident engineers, before entering on the duties of their offices, must execute an official undertaking in the sum of not exceeding fifty thousand dollars, to be fixed by the comptroller. But one division engineer and one resident engineer shall be employed on each division of the canals. The persons appointed to assist the division and resident engineers shall be classed as assistant engineers, levelers, rodmen and chainmen. The state engineer shall file with the comptroller a statement of all such appointments, containing the name of the appointee, the nature of his duties, the daily compensation to be paid him and the term of his employment.

The subject matter of this section was section 50 of the original Canal Law of 1894. Subdivision 6 of that section was amended by L. 1898, ch. 75. Since its incorporation in the Consolidated Laws as section 61 it has been amended by L. 1910, ch. 113. The section before amendment contained the words "in a sum not exceeding twenty thousand dollars." The amended section substitutes the following: "in the sum of not exceeding fifty thousand dollars."

Bonds of division and resident engineers.—When at certain periods advances to division and resident engineers up to $40,000 are imperative, a bond executed by a division engineer and his surety in the sum of $40,000 is legal and binding upon them, and the fact that the bond was not required by law to be given is no defense to the surety. The same rule applies in the case of a resident engineer. Op. Atty.-Gen. (1910) 431.

§ 62. Division engineers; general duties.— Each division engineer shall frequently pass over and carefully inspect all of the canals embraced in the division under his charge; examine and, if necessary, revise all surveys, maps, profiles, measurements, plans, specifications and estimates made in reference thereto by any engineer employed upon such division; see that the engineers and overseers of work employed thereupon faithfully perform their duties, and make to the state engineer and to the superintendent of public works or the assistant superintendent in

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special charge of the division, and to the superintendents of repairs, such suggestions in relation to repairs and the plan of making the same as will, in his judgment, most tend to the safe and economical navigation of the canals.

This is section 52 of the original Canal Law of 1894.

§ 63. Division engineers; duties as to maps, surveys and plans. — Each division engineer shall, under the direction of the state engineer, make or cause to be made all surveys, maps, plans, specifications and estimates necessary or required by the canal board or superintendent of public works, to determine the proper location of the line of the canals, or any portion thereof, upon his division, or preparatory to placing any work under contract for construction, and transmit a copy thereof to the state engineer, who shall, after a due inspection and revision, submit the same to the canal board, with his approval indorsed thereupon, and on obtaining the certificate of adoption of the canal board, he shall file the same in his office.

This is section 53 of the original Canal Law of 1894.

§ 64. Advances to division engineers.— If a division engineer has filed his official undertaking, he may draw on the comptroller for advances to meet the expenses of the engineer department upon his division. If such draft be countersigned by the state engineer, and a receipt for the amount thereof be filed with the comptroller, the comptroller shall pay the same by warrant on the treasurer in favor of such division engineer. But the advances unaccounted for to a division engineer shall, at no time, exceed sixty thousand dollars, and no money shall be drawn from the treasury to meet the expenses of the engineer department of the canals, other than those pertaining to the office of the state engineer, in any other manner.

The subject matter of this section was section 54 of the original Canal Law of 1894, as amended by L. 1904, ch. 14. Since its incorporation in the Consolidated Laws it has been amended by L. 1910, ch. 113; L. 1913, ch. 241. The section formerly read "forty" instead of "sixty" thousand dollars. It was amended to read "fifty" thousand dollars by L. 1910, and "sixty" thousand dollars by L. 1913.

Advances by comptroller.— The state comptroller may make advances to resident engineers, when vacancies exist in the offices of division engineers, in order to meet expenses of the subdivision on which each resident engineer is temporarily located. Op. Atty.-Gen. (1911) 71.

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§ 65. Accounts of division engineers.— Each division engineer shall quarterly, beginning on the first day of each fiscal year, render accounts of his disbursements, with sworn vouchers for the same, to the state engineer, who shall examine and, if found correct, approve them and forward them with such approval to the comptroller, who shall audit them. If any division engineer omits to render any such account, or his account rendered is not satisfactory, the comptroller shall notify the state engineer and no further advances shall be made to such engineer until he satisfactorily explains to the state engineer his omission to render proper accounts.

The comptroller shall prepare such blank forms and publish such rules as may be required to facilitate the rendering of such accounts and to insure uniformity therein.

This is section 55 of the original Canal Law of 1894.

§ 66. Duties of resident engineers.— The resident engineers shall, under the immediate direction of the division engineers, survey, lay out, measure and complete the quantities of all work ordered by the canal board or the superintendent of public works, to be surveyed for location, construction or other purposes; assist the division engineer, so far as necessary, in making maps, plans, specifications and estimates; see that the work done upon the several subdivisions is well and faithfully performed by the contractors, and in all respects strictly according to the terms of the contract, and on the completion of the same, accurately ascertain the quantity of the several items of work done and the amount at the contract prices, and present to the superintendent of public works or division engineer a final statement thereof in such form duly verified as shall be prescribed by the comptroller. Each resident engineer shall enter, or cause to be entered, in a book furnished for that purpose by the state engineer, all the field-notes and computations of the items of work done in the subdivision under his charge, with such recapitulations, diagrams and other illustrations as may be necessary to render the same intelligible, and a statement of the total quantity of each item of work done, the amount thereof at the contract price and the aggregate amount at contract prices of the work done by each contractor, which entry shall be in due form and properly certified by the several engineers making it, within three months from the time the final

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statement is prepared; and the books containing such entries shall, within one hundred days after the completion of the work on each subdivision, be properly indexed and filed in the office of the state engineer.

Each resident engineer shall perform such other services as are from time to time required by the state engineer or the division engineer in charge of the subdivision on which he is located. In case of the absence or inability of any division engineer to act, the resident engineer shall discharge the duties of such division engineer so far as they relate to the subdivision assigned to him.

This is substantially section 56 of the original Canal Law of 1894.

Bond to secure deposits by division and resident engineers.— A bond to secure deposits made by the division engineer of the eastern division is effective to secure the state for deposits made by a resident engineer who is temporarily discharging the duties of the division engineer. Op. Atty.-Gen. (1911) 82.

§ 67. Assistant engineers.— The first assistant engineer, when directed by the resident or division engineer, shall lay out and accurately measure and compute the quantities of the several items of work done or to be done in constructing the public works within the limits assigned to them; see that the work is faithfully performed by the contractors and others connected therewith, and in all other respects aid and assist the resident engineers in the discharge of their duties, and perform such other services in the line of their duties as the resident or division engineer may require.

This is section 57 of the original Canal Law of 1894.

§ 68. Engineer's record of measurements.— Every engineer on whose certificate payments are made for any public work shall enter in a book to be kept for that purpose every measurement made by himself or his assistant, with such explanations in regard to the location of the material, if the same has not been placed in the public work, as will enable his successor to identify and secure the material for the use of the state; and on leaving the public service, such book of measurements shall be deposited with the state engineer.

This is section 58 of the original Canal Law of 1894.

§ 69. Penalty for making false representations or estimates.— Any engineer or other officer or person in the employ of the state,

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who shall knowingly make any false representation or estimate of the nature, quality, quantity or cost of any work proposed by the state or any individual to be done, or of any materials so proposed to be furnished for any canal or its appurtenances, or any false representation or estimate in any statement of work or materials so proposed, which may be required by the canal board, or any other board or officer, or who shall knowingly report or certify to any false statement of the amount of any work done, or purporting to have been done for the state, or of the quality or nature of such work, or of the quality or quantity of any materials furnished or purporting to have been furnished to the state, by which any person may be enabled to claim or receive a greater allowance than is justly due, shall be deemed guilty of a misdemeanor, and on conviction shall be imprisoned in the state prison for not more than five years or in a county jail or penitentiary not more than two years, and shall be fined not exceeding one thousand dollars.

This is a new section, the matter not being found in the original Canal Law. It is not a new statute, however, but is section 12 of chapter 329 of the Laws of 1854, with the omission of the words "any canal commissioner" which followed the words "canal board." The board of statutory consolidation in its report (1907) at page 401 said: "Words 'any canal commissioner' omitted because, by amendment to the Constitution, concurrent resolution of Feb. 4, 1876, which created the office of superintendent of public works, the office of canal commissioner was abolished."

ARTICLE 6

Appropriation of Lands and Water

Section 80. Entry upon lands.
81. Permanent appropriation for repairs.
82. Temporary appropriation for repairs.
83. Owner of lands entitled to damages.
84. Damages resulting from the erection of dams or the temporary occupation of lands.
85. Removal of encroachments.
86. Agreements for the purchase of water privileges.
87. Supplying deficiencies of water.
88. Awards, how distributed in cases of liens or incumbrances.

§ 80. Entry upon lands.— The superintendent of public works may enter on, take possession of and use any lands, structures

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and waters, the appropriation of which for the use of the canals and the works connected therewith, and for the execution and completion of any repairs or improvements directed by the canal board or legislature to be made, shall in his judgment be necessary. An accurate survey and map of all such lands shall be made by the state engineer and certified by him to be correct, and the superintendent of public works shall indorse thereon or annex thereto a certificate stating that the lands described therein have been appropriated for the use of the canals of the state, and such map, survey and certificate shall be filed in the office of the state engineer. The superintendent of public works shall thereupon serve upon the owner of any real property so appropriated a notice of the filing and the date of filing of such map and survey, and specifically describing that portion of such real property belonging to such owner, which has been so appropriated, and from the time of such service, the entry upon and appropriation by the state of the real property described in such notice, for the uses and purposes of the canals, shall be deemed complete, and such notice shall be conclusive evidence of such entry and appropriation and of the quantity and boundaries of the lands appropriated.

The superintendent may cause duplicates of such notice, with an affidavit of due service thereof on such owner, to be recorded in the books used for recording deeds in the office of the clerk of any county of the state where any of the property described therein may be situated, and the record of such notice and of such proof of service shall be evidence of the due service thereof.

This is section 70 of the original Canal Law of 1894.

Sale of abandoned canal lands, see PUBLIC LANDS LAW, § 50.

Interest in land acquired by condemnation for canal as easement or fee, see note 20 Ann. Cas. 571.

Discretionary power of superintendent of public works.— The question as to what lands, structures or waters are necessary, and their temporary or permanent appropriation, is left to the judgment of the superintendent of public works, who may enter upon and take possession of such land as in his judgment may be necessary. People v. Fisher, (1908) 190 N. Y. 468, 83 N. E. 482, affirming 116 App. Div. 677, 101 N. Y. S. 1047.

Necessity to ascertain the quantity of land or water.— When lands or waters are appropriated by the state for canal uses, the quantity must be definitely ascertained and described, so that the owner may know how much has been taken, and for what he is entitled to compensation. Hayden v. State, (1892) 132 N. Y. 533, 30 N. E. 961; People v. Fisher, (1908) 190 N. Y. 468, 83 N. E. 482, affirming 116 App. Div. 677, 101 N. Y. S. 1047.

When appropriation is complete.— The moment the survey and location of a canal is adopted, and entry is made thereon by the direction or under

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the authority of the officer having the general charge, the appropriation is complete, although title does not vest in the people until compensation is made, or at least until the amount is ascertained and fixed in the manner prescribed by law. Turrell v. Norman, (1855) 19 Barb. 263; Baker v. Johnson, (1842) 2 Hill 342; Brinckerhoff v. Wemple, (1828) 1 Wend. 470. Mere words of appropriation, unaccompanied by possession, do not amount to an actual and complete appropriation. Waller v. State, (1895) 144 N. Y. 579, 39 N. E. 680.

Summary method of acquiring land.— Property required for canal purposes may be taken in a summary way, and without the aid of judicial proceedings. The title or right to the use may be acquired at any time and need not be obtained in advance, as the state may take possession, proceed with the work, and await the owner's claim for compensation. Waterloo Woolen Mfg. Co. v. Shanahan, (1891) 128 N. Y. 345, 28 N. E. 358, 14 L. R. A. 481, reversing 58 Hun 50, 11 N. Y. S. 829.

Appropriation of land of nonresident owner; what is sufficient notice.— Where the statute under which the state appropriated the land of a nonresident owner provided that if personal service of the notice could not be made upon the owner within the state, after reasonable efforts in the judgment of the superintendent of public works, he might make service by filing the notice with the clerk of the county where the property was located, and that from the time of such service the entry upon and appropriation by the state would be deemed complete, and the notice so served should be conclusive evidence of such entry and appropriation, the filing of such notice with the county clerk completes the service. The filing of a certificate by the superintendent of public works that he was unable to make personal service on the owner within the state is unnecessary. The state has the right to acquire the property of an individual without any notice whatever, provided he has an opportunity for a full and fair hearing on the question of compensation. The statutes under which canal lands were originally acquired contained no provision for the service of notice on the owner in any manner. Gring v. American Pipe, etc., Co., (1911) 74 Misc. 570, 132 N. Y. S. 545.

Trespass by former owner.— In an action for trespass on state lands it appeared that by reason of the erection of a dam private lands had been overflowed and damages therefor had been awarded by the board of claims. The dam was subsequently heightened and more land belonging to the same owner was overflowed, which resulted in a second claim for damages and a judgment in favor of the claimant. Before the last award was paid and after the Canal Law was passed, the state engineer made an accurate survey and map of the lands included in the previous survey, duly certified to by him, and the superintendent of public works annexed thereto his certificate permanently appropriating for state canal purposes the lands of the claimant as described in the annexed map and survey, all of which were duly filed in the office of the state engineer, and notice of the filing, specifically describing the lands appropriated, was served upon the claimant. It was held that the fee of the lands included within the survey and map as filed vested in the state, notwithstanding the fact that more land was included therein than was actually overflowed by the dam, and the entry of the former owner on lands between the flow line and the line of the survey and map constituted a trespass. People v. Fisher, (1908) 190 N. Y. 468, 83 N. E. 482, affirming 116 App. Div. 677, 101 N. Y. S. 1047.

Trespass by contractor.— Entry upon lands by a contractor engaged in improving the Erie canal prior to the filing of the map, survey and certificate required by statute and without notice to the owner, is a trespass for which the state would not in any way be liable, and for which the contractor could alone be held liable. United Traction Co. v. Ferguson Contracting Co., (1907) 117 App. Div. 305, 102 N. Y. S. 190; Van Alstine v. Belden, (1899) 41 App. Div. 123, 58 N. Y. S. 521, affirmed 161 N. Y. 661, 57 N. E. 1127.

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A contractor cannot justify his trespass upon private lands because the act was necessary in the performance of his contract, as, unless there is a lawful right to use adjacent lands for purposes of the work, it matters not that it was necessary. St. Peter v. Denison, (1874) 58 N. Y. 416, 17 Am. Rep. 258.

§ 81. Permanent appropriation for repairs.—Whenever in the judgment of the superintendent of public works any of the earth structures of the canals of the state should be raised, widened, strengthened or otherwise improved, he may enter upon and permanently appropriate to the use of the state so much of any lands adjacent to the canals as may be necessary to provide earth and gravel for such purposes.

Claims for damages by reason of any such appropriation may be adjusted and paid by the superintendent, if the amount thereof can be agreed upon with the owners of the lands appropriated, but such amount shall not be paid out of the treasury unless the canal board shall approve thereof.

This is section 71 of the original Canal Law of 1894.

Application to barge canal construction.—The provisions of sections 81–85 of the Canal Law do not apply to barge canal construction, and the superintendent of public works has no authority under the Barge Canal Law (Laws of 1903, ch. 147) to make appropriation of lands for temporary use in connection with the work of the barge canal construction. Op. Atty.-Gen. (1911) 257.

Compensation to adjacent owners.—An act of the legislature authorizing the agents of the state to enter upon the lands of individuals and to take and use the property in the construction and repair of canals without provision for adequate compensation is unconstitutional. Lyon v. Jerome, (1841) 26 Wend. 485, 37 Am. Dec. 271.

§ 82. Temporary appropriation for repairs.—Whenever the navigation of any canal is interrupted or endangered, the superintendent of public works shall, without delay, repair the injury causing or threatening such interruption, and for that purpose he may, by himself or by his agents, enter upon and use any contiguous lands, and procure therefrom all such materials as in his judgment are necessary or proper to be used in making such repairs, and agree, subject to the approval of the canal board, with the owner of the property so appropriated upon the amount of damage to be paid him therefor.

This is section 72 of the original Canal Law of 1894.

Duty to make repairs.—When the necessity for immediate repairs is apparent, the duty to make them without delay is imperative, and the superintendent of public works is liable to any party injured by his neglect to make repairs after notice of facts showing their necessity. Griffith v. Follett, (1855) 20 Barb. 620; Adsit v. Brady, (1843) 4 Hill 630, 40 Am. Dec. 305.

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Use of contiguous premises.— Contiguous premises and materials therefrom may be used to make necessary repairs, only where extraordinary repairs are required, and where from the want of ordinary repairs navigation is endangered. Ten Broeck v. Sherill, (1877) 71 N. Y. 276.

Damages for temporary use of lands.— Agents of the state are not liable for trespass in taking materials necessary for canal uses, and an appraisal may be made to ascertain the value of materials taken, and for the destruction of crops caused by the removal of fences. Wheelock v. Young, (1830) 4 Wend. 647.

§ 83. Owner of lands entitled to damages.— The title to all real property permanently appropriated for the use of the canals of the state shall be vested in the people of this state. The owner or person interested in any real property so permanently appropriated shall be entitled to be allowed and paid the damages resulting or accruing to him in consequence of such appropriation, after deducting therefrom the benefits received by or resulting to him in consequence of the construction and maintenance of the canal for the use of which the appropriation is made.

This is substantially section 73 of the original Canal Law of 1894.

"All real property."— The term "all real property," as used in this section, includes not only the lands, structures and waters, but also the estate or interest therein required, such as an easement, for canal uses. People v Walsh, (1914) 211 N. Y. 90, 105 N. E. 136, reversing 159 App. Div. 252, 144 N. Y. S. 367.

Necessity of compensation.— The legislature cannot authorize the agents of the state to enter upon the lands of individuals, and to take and use property for the construction or repair of canals, without making provision for adequate and certain compensation. Lyon v. Jerome, (1841) 26 Wend. 485, 37 Am. Dec. 271, reversing 15 Wend. 569.

Measure of damages.— The just compensation to one whose land has been taken for public use is measured by the market value where the entire property is taken, and by the difference in market value of the premises before and after the appropriation where only a part is taken; except where benefits are involved, when the owner must at least be awarded the market value of the land taken. Just compensation must include the owner's expenses incurred in the protection of his interests, including the cost of procuring an abstract of title, printing the claim, and the furnishing of blue prints of the appropriation maps, in accordance with the requirements of the Court of Claims. Brainerd v. State, (1911) 74 Misc. 100, 131 N. Y. S. 221. It is not only necessary that the boundaries and quantity of the land be ascertained and described, but the interest therein appropriated by the state must also be determined and stated for the purpose of ascertaining the compensation to which the claimant is entitled. People v. Fisher, (1908) 190 N. Y. 468, 83 N. E. 482, affirming 116 App. Div. 677, 101 N. Y. S. 1047. The state cannot appropriate a new artificial waterway for canal purposes without compensation to the users of the surplus waters thereof, and the compensation provided for in the statute, under which the appropriation was made, must be given without regard to the possible right of the state to take the water without making any compensation. Fulton Light, etc., Co. v. State, (1909) 65 Misc. 263, 121 N. Y. S. 536.

The award of canal appraisers, while they keep within their jurisdiction, cannot be attacked collaterally for mere errors of judgment; but they are

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officers of very special and limited jurisdiction, and where they have acted without or in excess of their jurisdiction, this may be shown in avoidance of the award in proceedings by mandamus to enforce it. People v. Schuyler, (1877) 69 N. Y. 242.

Where the state has authorized certain officers to make compensation for lands and properties which it has appropriated, and for the damage it has caused, the effect of such settlement is the same as a settlement between private persons, and the state is estopped from questioning its validity. People v. New York, etc., R. Co., (1909) 133 App. Div. 476, 117 N. Y. S. 1048.

§ 84. Damages resulting from the erection of dams or the temporary occupation of lands.— The owner of lands overflowed by the erection of a dam by the superintendent of public works upon any river or stream connected with such public works, or of lands, waters or streams which such superintendent occupies for temporary purposes in the construction or improvement of any canal or other work connected therewith, or upon which the superintendent enters for the purpose of obtaining materials for the construction or improvement of such canal or other works, shall have allowed and paid to him such just and equitable damages as he sustains by reason of the erection of such dam, or such occupation or entry upon such lands, waters or streams, and the superintendent of public works may agree with such owner on the amount of such damages subject to the approval of the canal board.

This is section 74 of the original Canal Law of 1894.

Overflow caused by erection of permanent dam.— The overflow of lands caused by the erection of a permanent dam, across Black river and part of the canal system, was held to constitute the taking of a permanent easement by the state. Benedict v. State, (1890) 120 N. Y. 228, 24 N. E. 314.

Cofferdam.— A temporary structure, such as a cofferdam, is not a dam within the meaning of the Laws of 1830, ch. 293. Heacock v. State, (1887) 105 N. Y. 246, 11 N. E. 638.

Limitation of state's interest in land.— The state is not limited to a mere easement, where land is flooded for canal purposes, but may acquire title to the land submerged and the surrounding shores. People v. Fisher, (1906) 116 App. Div. 677, 101 N. Y. S. 1047, affirmed 190 N. Y. 468, 83 N. E. 482.

Rights of abutting owner.— A mere abutter upon the berme bank of a cut debouching from the Oswego canal, and who necessarily used the cut for freighting, is not entitled to an injunction restraining the state from building a retaining wall and filling up the cut, as the act authorizing the filling up of such canal was not a violation of the constitutional provision forbidding the legislature to sell, lease or otherwise dispose of such canal. Lynch v. Partridge, (1901) 36 Misc. 302, 73 N. Y. S. 469.

§ 85. Removal of encroachments.— The superintendent of public works is authorized, in his discretion to cause to be removed

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from the lands taken by the state for canal purposes all encroachments thereon whether buildings, fences, structures or other obstructions; that such lands may be kept in the possession of the state for the purposes of canal navigation.

This is section 75 of the original Canal Law of 1894, as amended by L. 1896, ch. 492.

Power to remove encroachments.— The superintendent of public works has authority to remove encroachments and obstructions from lands used for canal purposes. Op. Atty.-Gen. (1896) 182. Private persons who have erected buildings on state lands must remove them after receiving notice from the state, and upon their failure so to do the state is not liable for the value of such buildings. Miller v. State, (1910) 68 Misc. 607, 125 N. Y. S. 148.

Dry docks as encroachments.— Dry docks erected on state lands under a lease from the canal commissioners cannot be considered as encroachments. Mattoon v. Monroe, (1880) 21 Hun 74.

§ 86. Agreements for the purchase of water privileges.—Whenever it is necessary to secure to a canal an additional supply of water, the superintendent of public works may agree with the proprietor of any hydraulic privilege affected by the taking of any such additional supply as to the terms and conditions on which the same may be taken.

This is section 76 of the original Canal Law of 1894.

§ 87. Supplying deficiencies of water.— Whenever the navigation of any canal is endangered by reason of a deficiency of water, the superintendent of public works shall, without delay, supply such deficiency. For that purpose, he shall resume the temporary use of all the surplus water leased upon the level of the canal where such deficiency exists. If there be still a deficiency of water, he may enter upon and use all lands, streams and waters, which, in his judgment, may be necessary or proper to be used to procure a temporary supply of water for such canals. The superintendent may agree with the owner of any property used for temporary purposes under this section, on the amount of damages sustained by him thereby, subject to the approval of the canal board, but no damages shall be allowed in any case for resuming the use of any leased surplus water.

This is section 77 of the original Canal Law of 1894.

Right to use temporary supply of water.— The superintendent of a canal may take the waters of a stream for temporary use pursuant to directions of a canal commissioner, although when the diversion was made he did not claim to act under instructions of the commissioner, and to take the water as a temporary and not as a permanent appropriation. Walrath v. Barton, (1851) 11 Barb. 382, affirmed 18 N. Y. 457; Lynch v. Stone, (1847) 4 Denio

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356. Water running from a higher to a lower level of a canal, the use of which in its passage has been leased by the state to individuals, is not surplus water, and its use need not be resumed to enable the commissioners to enter upon and take other waters for a temporary supply of the higher level. Lynch v. Stone, (1847) 4 Denio 356.

Prescriptive rights to state waters.— No private use, occupancy or easement, whether adverse or by permission, and however long continued, will vest a title inconsistent with the public right, or will impair or affect the rights of the state. Burbank v. Fay, (1875) 65 N. Y. 57.

Power to adjust damages.— The superintendent of public works may adjust the damages caused by the appropriation of water for the temporary supply of canals, but he has no authority to do so where the appropriation is for a permanent supply. People v. Schoonmaker, (1855) 13 N. Y. 238, reversing 19 Barb. 657.

§ 88. Awards, how distributed in cases of liens or incumbrances.— When damages are awarded for the appropriation of any lands or water to the use of a canal and it appears that there is any lien or incumbrance on the property so appropriated, the comptroller may deposit the amount awarded in any bank, in which moneys belonging to such fund may be deposited, to the account of such award, to be paid and distributed to the persons entitled to the same as ordered by the supreme court on application of any person.

This is section 78 of the original Canal Law of 1894.

Liens and incumbrances on title.— Where a claimant's title is subject to contingent remainders in favor of persons yet unborn an award by the Court of Claims is not a judicial determination of the title, and the claimant is entitled to have the award deposited by the comptroller at interest, to be distributed as ordered by the Supreme Court and pursuant to this section. People v. Sohmer, (1914) 163 App. Div. 830, 149 N. Y. S. 276. So the state cannot refuse payment for the property of a telephone company, appropriated upon the theory that the telephone line was an incumbrance upon the underlying fee of abutting owners, so that the award paid to said owners included all sums to which the telephone company might be entitled, and that it must look to said abutting owners for compensation under the section, especially where there is no pretense that the state included an item for the telephone line in the award to abutting owners, or in any way considered its value. The compensation to be paid to the company should not be measured by the cost of constructing a new similar line, as it is entitled only to the depreciated value of the old line. New York Telephone Co. v. State, (1915) 169 App. Div. 310, 154 N. Y. S. 1059.

Effect of award.— The award takes the place of the lands, structures and waters taken, and every interest, whether in possession, by reversion or remainder, or by mortgage or other lien or incumbrance, attaches to the award. The value of a leasehold interest attaches to the award and its owner has no claim against the state; his remedy is against the fund. Moroney v. State, (1910) 67 Misc. 58, 124 N. Y. S. 824; Taylor v. State, (1910) 124 N. Y. S. 818.

Depositing amount of award.— The depositing of the amount of the award by the comptroller is permissive, and not mandatory. New York Telephone Co. v. State, (1915) 169 App. Div. 310, 154 N. Y. S. 1059.

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ARTICLE 7

Surplus Water

Section 100. When adjacent owner may use surplus water.
101. Appraisal; failure to comply with conditions; resumption of surplus water.
102. Preference in the use of surplus water.
103. Preference on sale of surplus water.
104. When surplus water not to be leased.
105. Proceedings on sale of water.
106. Right of purchaser on partial resumption.
107. Erection of walls; prohibition of waste gates.
108. Discharge of water.
109. Discharge of surplus water on Rome level.
110. Surplus water on the Oswego canal.
111. Lease of surplus water arising from improvements.

§ 100. When adjacent owner may use surplus water.— If works, in which water power is lawfully used, adjacent to a river or creek across which a dam is constructed to raise a head of water for the use of a canal, may be benefited by the use of the surplus water, without prejudice to the canal, the owner of such works may use such surplus water for their benefit, if he:

1. Constructs under the direction of the superintendent a good and substantial raceway and gate in such dam to draw off as much of the surplus water as his works may require.

2. Gives such security to the people of the state, as the superintendent deems sufficient, to keep such gate and raceway in complete repair, so as to prevent any waste of water.

3. Applies to the canal board, within ninety days after such gate or raceway shall have been completed, to have the benefits accruing to him from the use of such dam or other erection ascertained.

4. Pays the sum at which such benefits are estimated into the treasury within ninety days after it is so ascertained.

This is substantially section 90 of the original Canal Law of 1894.

Who are entitled to use surplus waters.— All the provisions of the Canal Law seem to imply that to entitle a person to the use of surplus water or power produced therefrom, he must be the owner of adjoining premises or of the land over which the water flows. Op. Atty.-Gen. (1906) 373.

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Lease of surplus water.— Leases granting the privilege of taking water from a canal, but which specify no length of term and merely provide for the payment of an annual rental, can be canceled at any time. Op. Atty.-Gen. (1905) 329. The failure to pay rent, with interest thereon for the period during which the rent has remained unpaid, justifies the canal board in declaring a forfeiture of the lease. Op. Atty.-Gen. (1905) 334.

Right to draw water from canals.— The right to pipe water from a canal cannot exist without the authority of canal officials, and hence a person who tapped a state canal and ran a pipe line to his own land for irrigating purposes has no right of action for damages against another who maliciously plugged this pipe at its entrance into the canal. Beekman v. Jones, (1899) 42 App. Div. 328, 59 N. Y. S. 138.

Diversion of water flowing over a dam.— Where a dam was erected to furnish a head of water for a state canal, the surplus waters not necessary for public use and flowing over the dam and down the ancient channel cannot be legally diverted by a lessee of the surplus waters to the injury of owners of a mill privilege on the stream below the dam. Varick v. Smith, (1835) 5 Paige 136, 28 Am. Dec. 417.

Right to use waters of Mohawk river.— The state has the right to use so much of the waters of the Mohawk river as is necessary for its canal system, notwithstanding acts of the legislature authorizing a corporation to erect a dam and use said waters. Op. Atty.-Gen. (1900) 207.

§ 101. **Appraisal; failure to comply with conditions; resumption of surplus water.**— The canal board when so requested shall make a fair estimate of such benefits and a return thereof without delay to the state treasurer.

If such conditions are not fulfilled by the owner, the superintendent of public works shall close any raceway or gate constructed by such owner, and such owner shall not open the same, or any other in the same dam, unless on the performance of the conditions so imposed. The superintendent of public works may resume the privileges so granted, whenever in his judgment the surplus water or a portion thereof shall become necessary for the use of the canals. Whenever such privileges are so resumed, the sum paid into the treasury therefor shall be refunded.

Nothing in this article shall deprive the owner of hydraulic privileges of any rights possessed by him prior to any grant from the state under this article, unless his damages from the loss of such rights shall be paid.

This is section 91 of the original Canal Law of 1894.

§ 102. **Preference in the use of surplus water.**— If any water or mill privilege, lawfully used, is injured by the diversion of water to the use of a canal, the owner thereof, with the consent of the superintendent of public works and on the terms and conditions specified in this article, shall have the first privilege of

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taking the surplus water for the use of his works, from any works constructed for the purpose of such diversion or from the canal benefited thereby.

This is substantially section 92 of the original Canal Law of 1894.

§ 103. Preference on sale of surplus water.— When the canal board shall order a sale of surplus water to the use of which no person shall be first entitled, as the owner of works before such time legally used, according to the preceding provisions of this article, the owner of the land upon which the surplus water shall flow, and the owner of lands adjoining any dam erected by the authorities in charge of the canals, by which surplus water shall be created, shall be entitled to the first privilege of taking water subject to the provisions of this article, so far as the same may be applicable; and the superintendent shall have the same powers in relation to all such surplus water as are given in this article, in respect to surplus water by which hydraulic privileges are benefited, but he need not close any raceway or gate, if he deems it inexpedient. On application by such owner for such privilege, the superintendent of public works may request the canal board to estimate the value thereof, and the board shall make such estimate and include therein the value of any use of such water which such owner may have previously had. Such owner shall pay the amount of such appraisal into the treasury within ninety days after notice thereof. If such owner omits for three months after being notified by the superintendent to make such application or neglects to comply with any provision of this article the canal board shall order a sale of such surplus water.

This is substantially section 93 of the original Canal Law of 1894.

Preference of adjoining owner.— The canal board is authorized to grant to adjacent owners the right or privilege of taking waters from the canal for manufacturing or other purposes, whenever such water can be spared without impairment to the efficiency and use of the canal; and in case the adjacent owner fails to take advantage of such privilege, then in that event the canal board is authorized to grant such privilege to any other person who would pay the largest annual rent for such water. Op. Atty.-Gen. (1905) 334.

§ 104. When surplus water not to be leased.— If, in the opinion of the canal board, a lease of surplus water will not confer on the lessee the right or authority to use the same without the consent of the owner of the land over which such surplus water

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flows, it shall not authorize the letting of the same, without evidence that such consent has been given to such use.

This is substantially section 94 of the original Canal Law of 1894.

§ 105. Proceedings on sale of water.— When a sale of surplus water is directed by the canal board, the superintendent of public works shall sell and convey such surplus water in the following manner:

1. Each privilege of using such water shall be sold separately at public auction to the person bidding the highest annual rent therefor.

2. The place of sale shall be in the vicinity of the place where the water may be most conveniently used.

3. A notice stating the time and place of the sale and the privilege to be sold, shall be published twice in each week for six successive weeks immediately preceding the sale, in the state paper, and once in each week for the same time in two newspapers published in the county where the water is to be sold, one of which shall be in the town, village or city where the privilege is situated, if any newspaper is published therein.

4. A lease for such a term of years as may be directed by the canal board shall be executed by the superintendent in the name of the state to the purchaser, reserving the rent bid, and containing a covenant for its payment annually to the commissioners of the canal fund; a condition that if it remains unpaid for one year after it is due, the lease shall be forfeited to the state; a reservation of the right wholly to resume the water conveyed and the privileges granted, and to control and limit the use of such water and privileges, whenever, in the opinion of the canal board or of the legislature, the necessary supply of water for the use of any canal, or the safety of such canal or works connected therewith, may render such resumption, control or limitation necessary; and a provision, that where such resumption is made, or control or limitation imposed, no compensation or damages shall be allowed for any improvements or erections made in consequence of such lease; and a further reservation of the right of the state, without making any compensation to the purchaser, to wholly abandon or destroy the work by the construction of which such surplus water was created, whenever in the opinion of the superintendent the occupation and use of such work may cease to be advantageous to the state.

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5. A duplicate of such conveyance under the hand and seal of the purchaser shall be executed and delivered by him to the superintendent of public works, who shall, without delay, procure the same to be recorded in the clerk's office of the county in which the privilege sold is situated and transmitted to the commissioners of the canal fund.

6. All the expenses attending the execution of the conveyance and the recording thereof shall be paid by the purchaser.

This is substantially section 95 of the original Canal Law of 1894.

License to use surplus water of Skaneateles lake.— A license to use surplus waters from Skaneateles lake by the city of Syracuse is constitutional, although the lake had been appropriated by the state as a feeder to the Erie canal, where the surplus waters are not needed by the state. Sweet v. Syracuse, (1891) 129 N. Y. 316, 27 N. E. 1081, 29 N. E. 289, reversing 60 Hun 28, 14 N. Y. S. 421.

Effect of nonpayment on lease of canal waters.— Where the use of water from a state canal had been leased to one's predecessor in title, with the right to revoke the lease on nonpayment of rent, and it appeared that no rent had been paid for over fifty years and no demand had been made by the state, nor had the lease been revoked, it was held that such failure to pay rent was not an abandonment of the lease, and as the state had slept on its rights there was no forfeiture. People v. Freeman, (1906) 110 App. Div. 605, 97 N. Y. S. 343.

§ 106. Right of purchaser on partial resumption.— If there is a partial resumption only of the water so sold, the purchaser may use the remaining water privileges for the remainder of his term on the payment of a reduced rent to be fixed by the canal board. If he refuses to accept the remaining privileges at the reduced rent, they shall be sold by the superintendent of public works under the direction of the canal board.

This is substantially section 96 of the original Canal Law of 1894. As section 106 it was amended by L. 1909, ch. 240. The amendment corrected a clerical error in the title by changing the word "purchase" to "purchaser."

§ 107. Erection of walls; prohibition of waste gates.— Where water is taken from any canal or work connected therewith for hydraulic purposes, the superintendent of public works shall construct a permanent wall or erection of stone laid in mortar and cemented, of sufficient thickness to insure the safety of the canal, not less than six inches lower than the top water line of the canal.

No waste-gate, sluice, slide, water-gate or other passage shall be made in connection with any wall or erection over which water is to be drawn in such manner that the same can be opened, or that water can be drawn by, through or under the same, to the use of any mill or machinery, using water from the canal.

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This section does not apply to Black Rock, the mouth of Tonawanda creek, the locks at Lockport or any place where such water is taken from a dam across a stream used as a feeder or from a feeder not navigable.

This is substantially section 97 of the original Canal Law of 1894.

§ 108. Discharge of water.— Every owner of any water privilege upon a canal shall discharge the water owned by him at such place as the superintendent directs.

This is substantially section 98 of the original Canal Law of 1894.

§ 109. Discharge of surplus water on Rome level.— The surplus water in the western portion of the Rome level of the Erie canal shall at all times be discharged through the culverts of the locks at the western end of the level, so far as the capacity of such culverts permits, and in no case shall any such surplus water be discharged into the channels of Limestone and Butternut creek, except to guard against danger to the banks of the canal, in the discretion of the superintendent of public works.

This is substantially section 99 of the original Canal Law of 1894.

§ 110. Surplus water on the Oswego canal.— The superintendent of public works may permit the surplus water flowing over any dam on the Oswego river, except the dam nearest the city of Oswego, to be used for hydraulic purposes, by the owners of the lands upon which such water flows, under such regulations and restrictions as he may impose, and subject to be resumed partly or wholly, whenever he deems best, without any right of the person receiving such permission to claim any damage or compensation for such resumption. Such permission shall not be given to use any water on the level of the Oswego canal.

This is substantially section 100 of the Canal Law of 1894.

Rights of shore owner along Oswego river.— An owner of the shore along the Oswego river has no right to the water inconsistent with the navigation, improvement, and diversion thereof by the state, and he is not entitled to damages therefor, as since 1827 the river has been a part of the canal system, and the state would only be liable for damages caused by flooding from dams, or work done upon the upland held under private ownership. Op. Atty.-Gen. (1908) 243.

§ 111. Lease of surplus water arising from improvements.— The superintendent of public works, with the approval of the

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canal board, is hereby authorized, upon such terms as he shall deem advantageous to the state, to make a lease of any of the surplus water of the canals of this state arising from enlargement or improvements of the same, actually made, or in progress, which water shall not be necessary for the navigation or operation of such canals, or may be withdrawn for use for power and returned without detriment thereto, and which has not heretofore been leased. Such lease shall provide that it may be terminated in whole or in part whenever the superintendent of public works shall deem the whole or any part of such water desirable for the purposes of the canals. All connections for withdrawing the water and for the return of the same shall be made in accordance with plans to be approved by the state engineer and surveyor and under the supervision of said superintendent of public works. The power conferred by this section is in addition to any power in the premises now given by statute.

This is substantially L. 1897, ch. 595. It was not incorporated in the original Canal Law of 1894.

Disposal of surplus water created by dam.— The state has the right to appropriate to itself the water backed up by its dams, and also the right to dispose of this surplus water for the development of power, provided it does not thereby injure a lower riparian owner, who may be entitled to the surplus flow over the dam. Fulton Light, etc., Co. v. State, (1909) 65 Misc. 263, 121 N. Y. S. 536.

ARTICLE 8

Highways and Bridges

Section 120. Alteration of roads.
121. Farm and road bridges.
122. Commutation for bridges.
123. Private road in lieu of farm bridge.
124. Iron bridges.
125. Models and location of bridges.
126. Restriction on the construction of farm and road bridges.
126-a. Maintenance of bridges by municipal corporations.
127. Construction of bridges by municipal corporations.
128. Construction of lift, hoist or swing-bridge by city.

§ 120. Alteration of roads.— If the superintendent of public works, or assistant superintendent having charge of the work,

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deems it necessary to discontinue or alter any part of a public road, because of its interference with the proper location or construction of any work on the canals, either of construction, repairs or improvement, he shall direct such discontinuance or alteration to be made, and file an accurate description of the part of such road so discontinued and laid out anew in the office of the town clerk of the town in which the same is situated; and from the time of filing such description, such road shall be so altered.

The passage of the part of such road so discontinued or altered shall not be obstructed until such superintendent or his assistant opens and works the part of such road so laid out anew, as to render the same passable. The written certificate of a justice of the peace of the county in which such road is situated that the part so laid out anew has been so opened and worked, shall be sufficient evidence thereof. Every alteration made by any engineer on any public road upon either of the canals before the first day of January, eighteen hundred and twenty-eight, shall be deemed valid in law from the time of such alteration.

This is section 110 of the original Canal Law of 1894.

Laying out, altering and discontinuing highways, see HIGHWAY LAW, §§ 190–208.

Change in location of highway.— Before the location of an existing highway is changed, the superintendent of public works must provide a new highway, and it is proper to include in a contract for canal improvements a provision for such change. Op. Atty.-Gen. (1906) 361. The description of the new highway, but not necessarily a map, should be filed with the town clerk of the town in which the road is situated. The state is not liable for the care of the road, as it remains a town highway, and its care rests upon the town, except so far as the burden has been in part assumed by the state in the cases of improved highways. Op. Atty.-Gen. (1912) 224. The title to so much of a public highway as has been altered or taken for canal purposes is vested in the state, but title to the residue, if any, remains in the original owner, subject to the public easement. Higgins v. Reynolds, (1865) 31 N. Y. 151; Op. Atty.-Gen. (1909) 450. The highway commission may, through the state engineer and surveyor, authorize a contractor to close a highway rendered useless by the construction of the barge canal. Op. Atty.-Gen. (1909) 415.

Where the state, in condemning lands for a reservoir used in connection with the barge canal, filed a map showing and definitely specifying a telephone line erected by a domestic corporation on a public highway under consents obtained from a majority of abutting landowners, who owned fees in a highway, with a statement that the line would be appropriated by the state, there was not a mere regulation of the telephone company's franchise by requiring a relocation of its line, but an appropriation of its property for which it is entitled to compensation. The telephone company having accepted a franchise from the state and having in reliance thereon acquired easements and erected a telephone line, a contract was thereby made between the company and the state, and its franchise, easements and physical structures became property

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of which it could not be deprived without just compensation. New York Telephone Co. v. State, (1915) 169 App. Div. 310, 154 N. Y. S. 1059.

Intersection of highway by barge canal.— The intersection of a village street by the barge canal, so that communication from one direction is interrupted, does not establish a claim for damages against the state by one owning lands upon such street, which do not abut upon the canal, and no part of which had been taken therefor. Vogel v. State, (1907) 61 Misc. 35, 114 N. Y. S. 538.

§ 121. Farm and road bridges.— The superintendent of public works is authorized and required to construct and hereafter maintain, at the public expense, road and street bridges over the canals, in all places where such bridges were constructed prior to the twentieth day of April, eighteen hundred and thirty-nine, if, in his opinion, the public convenience requires that they should be continued, whether theretofore maintained at the expense of the state or of the towns, villages and cities where they are situate.

The superintendent is authorized to construct farm bridges over such canals when the same, in his opinion, are reasonably required, having reference to the accommodation of the owners of the land and a due regard to economy to the state and the convenience of navigation. But this provision does not abridge the power of the superintendent in relation to streets, roads and bridges as prescribed by law on the date above specified.

When a farm bridge is constructed in lieu of one theretofore maintained by the owner of the land and damages are claimed by such owner for the appropriation of lands or other injury done in the enlargement of the canals, the benefit derived by the owner by being relieved from the expense of maintaining the farm bridge over the canal shall be set off against any damage so claimed.

This is section 111 of the original Canal Law of 1894.

As to bridges generally, see HIGHWAY LAW, §§ 250–267.

Approach at canal as part of bridge, see note Ann. Cas. 1912B 795.

Duty of railroad to construct bridge over public canal or waterway at its own expense, see note Ann. Cas. 1912D 1036.

General scheme of statutes as to canal bridges.— The general scheme of the statutes relating to canal bridges is for the state to construct and maintain all bridges that may be required on account of the opening of canals, and that the towns shall construct and maintain all bridges crossing canals that may be necessary by reason of the laying out of new roads or streets since the completion of the canals. Op. Atty.-Gen. (1909) 645.

Duty of state as to bridges.— The duty to keep a bridge over a state canal in safe condition for public travel rests primarily upon the state, and it is liable for injuries resulting from its negligence in that respect. People v. Syracuse Rapid Transit R. Co., (1909) 129 App. Div. 800, 114 N. Y. S. 776. Although the state has licensed a street railway company to lay tracks over a canal bridge under an agreement requiring the licensee to pay a part of the cost and maintenance, and to be liable for "all damages that may occur or arise either to the state or to individuals in consequence of the construc-

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tion and maintenance of said street railway, over and across said canal bridges and crossings," the state having been compelled to pay damages for personal injuries owing to the collapse of the bridge cannot recover such damages from the company, as the duty of keeping the bridge in safe condition is upon the state irrespective of such license, and the license cannot be construed to the effect that the company assumed liability for the negligence of the state. People v. Syracuse Rapid Transit R. Co., (1909) 129 App. Div. 800, 114 N. Y. S. 776.

Liability of railway company in using bridge.— A bridge over a canal, where it intersects a highway, while under the care and control of the state, is a part of the highway, and may be crossed by a street railway company, but the company does not thereby make the bridge an appliance of its own, and its liability when on the bridge does not differ from its liability when traversing any other part of the highway. Birmingham v. Rochester City, etc., R. Co., (1893) 137 N. Y. 13, 32 N. E. 995, 18 L. R. A. 764.

Construction of bridges and highways made necessary by barge canal.— There is no legal provision requiring the state to build a farm bridge over the barge canal in order to enable an owner having land on both sides thereof to cross; nor is there any provision requiring the state to build a private road to enable the owner of land cut off from the main portion of his farm to reach an existing highway. Op. Atty.-Gen. (1907) 340. The canal authorities have exclusive jurisdiction over the construction of new or altered bridges over the barge canal, and the approaches thereto; and may use their judgment regarding the suitability or safety of a macadam or other pavement on the grade of such approaches. When town structures are completed their care and maintenance fall upon the towns (Highway Law, § 250), and the highway commission has only advisory supervision over them (Highway Law, §§ 15, 170). Op. Atty.-Gen. (1914) 285.

Supervision of bridges and highways on Indian reservations.— All bridges and highways located on Indian reservations are under the supervision of the highway commissioner, and the superintendent of public works has supervision over the same only when such bridges or highways cross state canals. Highway Law, § 157; Op. Atty.-Gen. (1910) 918.

§ 122. Commutation for bridges.— The superintendent of public works may commute with owners and claimants of bridges over any canal, by paying such owner or claimant such sum in lieu of a bridge as may be agreed on between the claimant and the superintendent. If, in the opinion of the superintendent, a bridge should not be rebuilt, and the amount to be so paid be not agreed upon, the bridge shall not be built, but the damages sustained by such owner by being deprived of such bridge, and which the state under all the circumstances ought of right to pay, shall be ascertained in the same manner as damages for the appropriation of real property for the use of the canals, and paid by the superintendent. If the damages be claimed for the deprivation of a bridge which the claimant had before constructed or maintained, the circumstance of his being equitably bound to contribute proportionately towards the construction and maintenance of an enlarged bridge shall be taken into consideration and a proper

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amount on that account shall be set off against any damage to which the claimant might otherwise be entitled.

This is section 112 of the original Canal Law of 1894.

§ 123. Private road in lieu of farm bridge.— If the superintendent of public works can not agree with the owner of a farm bridge over a canal, as to the amount of commutation, in any case where such superintendent is of opinion that the state should erect such bridge, and such superintendent determines that a private road through adjoining lands will sufficiently accommodate such owner and that the same can be laid out with economy to the state, he may apply to the commissioners of highways of the town to lay out a private road for the accommodation of the owner, in the manner prescribed by law for laying out private roads, and pay to the owner of the lands through which the same the bridge is to be a part.

This is section 113 of the original Canal Law of 1894.
***Laying out private road,* see HIGHWAY LAW, §§ 211–226.**
Ownership of private road.— A private road is paid for and owned by the applicant. The public has no title to or interest in it, and no citizen has the right to use the road as he does the public highway. Taylor v. Porter, (1843) 4 Hill 140, 40 Am. Dec. 274.

§ 124. Iron bridges.— When the construction of an iron bridge over a canal is ordered by the legislature, or required by the superintendent of public works, the state engineer shall prepare a plan and general specifications for the construction of such bridge and submit the plan to the canal board. On obtaining the certificate of adoption by the canal board he shall file the plan so approved in his office and a copy thereof in the office of the superintendent of public works, who shall then advertise for proposals for the work, and award the contract to the lowest responsible bidder.

This is section 114 of the original Canal Law of 1894.

§ 125. Models and location of bridges.— No bridge shall be constructed across any canal without first obtaining for the model and location thereof the written consent of the superintendent of public works or of a superintendent of repairs upon that line of the canal which is intersected by the road or highway of which the bridge is to be a part.

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Every person undertaking to construct or locate any such bridge without such consent and placing any materials for that purpose upon either bank of the canal or upon the bottom thereof, shall forfeit to the state the sum of fifty dollars, and the superintendent of public works or any assistant superintendent, superintendent of repairs or engineer may remove all such materials as soon as they are discovered, wholly without the banks of the canal.

This is section 115 of the original Canal Law of 1894.

Uncertainty as to location of bridge.— Where it is uncertain at what particular point between two towns the barge canal will pass, or the nature of the bridge required, the court will deny an application for its construction, with liberty to renew it when the conditions have been fully ascertained. Matter of Mohawk River Bridge, (1908) 128 App. Div. 54, 112 N. Y. S. 428.

§ 126. Restriction on the construction of farm and road bridges.— A person shall not be entitled to demand a farm bridge across a canal or feeder where the necessity or convenience of such bridge shall have arisen from the division or acquisition of property subsequent to the location of such canal or feeder. A street or road bridge shall not be constructed by the superintendent of public works over a canal or feeder, except upon such streets or roads as were laid out, worked or used previously to the construction of the canal or feeder by which such street or road was or is obstructed; and when bridges are constructed or reconstructed upon any such streets or roads, the cost to the state shall in no case be more than is required to preserve in a safe and substantial manner the continuity of such streets or roads so as not to unnecessarily impair their usefulness. When a bridge of a more costly nature is desired by the local authorities of a city, town or village within whose corporate limits a bridge is to be built or rebuilt, the superintendent of public works, on presentation to him by such local authorities of plans and specifications for such bridge, approved by the state engineer, shall estimate and determine the proportion of the cost, which, in order to preserve the continuity of such streets and roads, the state ought equitably to pay, and file such estimate and determination in his office and a duplicate thereof in the office of the clerk of such city, town or village, and no more than such proportion of the cost shall be appropriated by the legislature for such purpose, and then only on condition that such city, town or village shall pay the remainder of such cost. If a private road or public highway is laid out by

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legal authority in such direction as to require the erection of a new bridge over a canal for the accommodation of the road, such bridge shall be so constructed and forever maintained at the expense of the town or city in which it shall be situated.

This is section 116 of the original Canal Law of 1894.

Bridges in general, see HIGHWAY LAW, §§ 250–267. *Condemnation of bridges*, see HIGHWAY LAW, § 20. *Construction and repair of bridges by commissioner of highways*, see HIGHWAY LAW, § 15, subd. 5.

Payment by municipality.— Any fund appropriated by the legislature for the building of a bridge in conjunction with a municipality is not available until such municipality has paid its share of the cost, and a deposit of municipal bonds is not a payment. Op. Atty.-Gen. (1914) 84.

§ 126-a. [Maintenance of bridges by municipal corporations.] —The town board of a town or the board of trustees of a village may submit to any biennial or special town meeting or to any annual or special village election, as the case may be, a proposition that the town or village, as the case may be, shall annually pay the expense or a portion of the expense or cost, not exceeding annually the amount specified in the said proposition, of maintenance and operation of any lift, hoist or swing bridge which the state has constructed or shall have planned or proposed to construct over and across any canal in any such town or village. If such proposition be adopted, such annual expense, not exceeding the amount specified in the proposition, shall be a town or village charge, as the case may be, and shall be levied, collected and paid annually in the same manner as other town or village charges.

Added by L. 1911, ch. 677.

§ 127. Construction of bridges by municipal corporations.— A town, village or city upon the line of any canal, at its own cost and expense, with the consent and under the direction of the superintendent of public works, may erect and maintain at any point within its limits, where a bridge is not maintained by the state, such bridge across such canal, of such kind, dimensions and materials, and with such approaches as such superintendent approves, at the proper cost and expense of such town, village or city, at any point where there is not now a bridge built and maintained by the state. If such bridge shall be a hoist, lift or swing-bridge, and requires the constant attendance of bridge tenders to manage and work it, the superintendent may appoint and remove such bridge tenders as he deems necessary, and the expenses and wages thereof shall be paid to the superintendent by such town

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or village when he may require it, to be paid by him to such bridge tenders, and all the cost of material, power or tools necessary for the tending of such bridge shall be paid for by such town or village on demand therefor by the superintendent.

This is section 117 of the original Canal Law of 1894.

Bridge connecting two towns.— Where a highway in two towns is intersected by the bank of a river which divides the towns, and which has been made a part of the canal system, a bridge may be constructed across such river and connecting the highways, although no bridge had existed there before. Matter of Mohawk River Bridge, (1908) 128 App. Div. 54, 112 N. Y. S. 428.

Expense of erecting and operating bridge.— The burden of erecting and operating a bridge, more costly for the state and more convenient for a town than the ordinary road bridge, may be divided between the state and the town. Ridgeway v. Treman, (1911) 72 Misc. 452, 129 N. Y. S. 1081.

Wages of bridge tenders.— Bridge tenders are employees of the state, and as such the state has the constitutional right to fix their wages under Laws of 1889, ch. 380, but it was held under a former statute (Laws of 1881, ch. 488, since repealed) that any village, city or town, having bridge tenders on a canal bridge within its limits, was responsible for the wages of such tenders. Failing v. Syracuse, (1893) 4 Misc. 50, 24 N. Y. S. 705; Ridgeway v. Treman, (1911) 72 Misc. 452, 129 N. Y. S. 1081. If a town erects a lift bridge wholly or partly at its own expense, under sections 126 or 127 of the Canal Law, the wages of bridge tenders are directed by law to be paid by the town. Ridgeway v. Treman, (1911) 72 Misc. 452, 129 N. Y. S. 1081.

§ 128. Construction of lift, hoist or swing-bridge by city.— The common council of any city may provide by ordinance for the erection of a lift, hoist or swing-bridge over a canal at any street in such city, and, if the superintendent of public works consents to such erection, in writing, filed with the clerk of such common council, may levy and assess the cost of the construction of such bridge on the property benefited thereby. Such bridge shall be built, operated and maintained under the supervision and control of such superintendent, but at the expense of such city or of the property adjudged by the common council thereof to be so benefited.

This is section 118 of the original Canal Law of 1894.

ARTICLE 9

Contracts

Section 140. Restrictions on power to contract.
141. Contracts required to be in writing.
142. Requisites of proposals.
143. Indemnity clause in contracts.

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Section 144. Security for performance of contract.
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146. Construction to be kept distinct from repairs.
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149. Inspection of materials and tools furnished.
150. Proceedings in case of neglect or refusal to perform contract.
151. Exemption of materials from execution.
152. Certain directions to be in writing.
153. Drafts of money by the superintendent for the payment of contracts.
154. Verification of estimates and measurements before payment.

§ 140. Restrictions on power to contract.— No work shall be contracted for upon any of the canals, until the division engineers ascertain with all practicable accuracy, the quantity of embankment, excavation, masonry, the quantity and quality of all materials to be used, and all other items of work to be placed under contract, and a statement thereof, with the maps, plans and specifications, corresponding to those adopted by the canal board, and on file in the office of the state engineer, is publicly exhibited to every person proposing or desiring to make a proposal for such work. The quantities contained in such statement shall be used in determining the cost of the work, according to the different proposals received, and when the contracts for any such work are awarded, every such statement, with such maps, plans and specifications and all other papers relating to the work advertised and which are necessary to identify the plan and extent of the work embraced in such contracts, shall be filed in the office of the state engineer, with the certificate of the state, division or resident engineer, stating the time and place of their exhibition. No alteration shall be made in any such map, plan or specification or in the plan of any work under contract during its progress, except with the consent and approval of the superintendent of public works and the state engineer, nor unless a description of such alteration and such approval be in writing and signed by the parties making the same, and a copy thereof filed in the office of the state engineer. No change of plan which shall increase the expense of any

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such work or create any claim against the state for damage arising therefrom shall be made, unless a written statement, setting forth the objects of the change and the expense thereof, is submitted to the canal board, and their assent thereto, at a meeting when the state engineer was present, is obtained.

This is section 130 of the original Canal Law of 1894.

Construction of state contracts.— The state in its contracts with individuals must abide by the same rules which govern in similar cases between individuals, and under such contracts the rights and obligations of the contracting parties will be adjusted upon the same principles as if both contracting parties were private persons. People v. Stephens, (1878) 71 N. Y. 527.

Illegal contract.— Where four persons, one of them a state engineer, made an agreement to bid for certain public work, all to be interested in the bid, and before the work was awarded agreed to and did withdraw the claim to the work and sold their bid for four hundred dollars to a party who was a higher bidder for the same work, the purchaser giving his note for the amount with the understanding that when the note was paid each of said persons should receive one hundred dollars, it was held that the agreement was illegal, as the statute (Laws 1854, ch. 329) requires that any proposal for work shall contain the names of all parties interested therein, and prohibits any secret arrangement that any person not named, or any engineer in the employ of the state, shall be so interested. Woodworth v. Bennett, (1871) 43 N. Y. 273, 3 Am. Rep. 706, reversing 53 Barb. 361.

A contract for public work based upon an agreement to put in a sham bid is void as against public policy. Baird v. Sheehan, (1899) 38 App. Div. 7, 56 N. Y. S. 228, affirmed without opinion 166 N. Y. 631, 60 N. E. 1107. And the canal officials have power to arrest and prevent the performance of any work at unusual and extravagant prices, and the performance of contracts procured by fraud and prejudicial to the interests of the state. People v. Stephens, (1878) 71 N. Y. 527.

Reimbursement for increased expenses.— The reimbursement to a contractor for increased expenses caused by a change of plans not authorized by the canal board, is improper and illegal. Op. Atty.-Gen. (1903) 458.

§ 141. Contracts required to be in writing.— Every contract for the construction of a canal and for any repairs or improvements on the canals directed by the legislature or canal board shall be in writing and executed in triplicate, one of which shall be retained by the superintendent of public works and one deposited with the comptroller, and shall not be entered into without public notice of the time and place of the receipt of sealed proposals for the work to be done thereunder, published for ten days successively in the state paper and in one or more newspapers of each county in which such work or any part thereof is to be done.

Every contract entered into by the superintendent of public works or an assistant or any assistant superintendent or deputy or superintendent of canal repairs or engineer in charge of repairs for the delivery of timber or lumber or the furnishing of other materials for the repairs of the canals or to do or to complete a

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specified piece of work relating to such repairs and involving the performance of labor and the furnishing of materials when not advertised to be let to the lowest bidder shall be in writing, stating the time within which it is to be performed and executed, not exceeding one year, duly authenticated and filed in the office of the comptroller before any money is paid thereon and within fifteen days after its execution.

This is substantially section 131 of the original Canal Law of 1894 as amended by L. 1896, ch. 188.

Contracts for work or materials on any canal shall be made with the lowest bidders and with adequate security. No extra compensation shall be made to any contractor, but if the terms of the contract prove to be unjust the canal board may, upon application of the contractor, cancel such contract. Const., art. 7, § 9.

The constitutional provision as to canal contracts was not intended to confer a right upon the bidder but to protect the state. The superintendent of public works has authority to impose as a condition for considering bids for canal work that the bidder shall deposit with him a reasonable sum as security, and he may refuse to consider a bid where the deposit was made by a check payable not to his order, but to the order of the state treasurer. The requirement that prices bid shall be written in ink, in both words and figures, is essential, and the superintendent of public works may refuse to consider a bid where the prices are entered only in figures. People v. Stevens, (1910) 67 Misc. 529, 124 N. Y. S. 769.

Discretionary power to award contracts.— Discretionary power to award contracts, and to determine who is the "lowest bidder" and what is "adequate security," is vested in the canal officers. People v. Fay, (1871) 3 Lans. 398.

Power to increase price of labor and materials.— The canal board cannot increase the price of labor and materials after a contract has been awarded. People v. Canal Board, (1871) 4 Lans. 272. The legislature has power during the progress, or after the completion of the work, to increase the price, or to make an additional allowance for work done. People v. Dayton, (1874) 55 N. Y. 367.

Power to reject bids.— The superintendent of public works has power to reject any or all bids for the work of improving the canals and to readvertise for new bids. Op. Atty.-Gen. (1897) 242.

Right of lower bidder to mandamus.— A lower bidder is not entitled to a mandamus, even though he has furnished the required security. People v. Contracting Board, (1863) 27 N. Y. 378; People v. Contracting Board, (1865) 33 N. Y. 382.

Where state officers in the notice for bids for changing the operating machinery of certain bridges over the Erie canal had an option to reject any or all bids, the unsuccessful bidder is not entitled to have his bid accepted even assuming that the bid of the successful bidder should have been rejected as too indefinite. The most that he would be entitled to would be to have the bid set aside and then to require the state officers to accept his bid or advertise anew. Matter of Hilton Bridge Const. Co., (1897) 13 App. Div. 24, 43 N. Y. S. 99.

§ 142. Requisites of proposals.— Every proposal for a contract, for which written proposals are to be received, shall be sealed, and shall be for a sum certain as to the price to be paid or received,

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and no proposition not thus definite and certain, or which contains any alternative condition or limitation as to such price, shall be received or acted upon.

If any person offers more than one proposal for the same contract, all his proposals therefor shall be rejected.

This is section 132 of the original Canal Law of 1894.

Application to barge canal contracts.— The section does not apply to the manner and method of bidding on and letting contracts for barge canal work, as the provisions in regard thereto are found in the barge canal statute itself. Op. Atty.-Gen. (1905) 463.

§ 143. Indemnity clause in contracts.— The canal board shall cause to be inserted in all contracts for work or repairs on the canals a clause requiring the contractor to pay all damages arising to the state or to any person by reason of the neglect, default or misconduct of such contractor in the performance of the contract.

This is section 133 of the original Canal Law of 1894.

Liability of contractor.— A contractor is liable for damages caused by his negligence. French v. Donaldson, (1874) 57 N. Y. 496; Fulton Fire Ins. Co. v. Baldwin, (1868) 37 N. Y. 648; Conroy v. Gale, (1871) 5 Lans. 344, affirmed 47 N. Y. 665; Robinson v. Chamberlain, (1866) 34 N. Y. 389, 90 Am. Dec. 713. He is also liable for damages resulting from his failure to keep locks in repair. Robinson v. Chamberlain, (1866) 34 N. Y. 389.

A contractor acts ministerially and stands exactly where the superintendent of repairs did prior to the laws authorizing the letting of canals by contract, and is equally liable for negligence in the performance of his duties; and although bound to exercise a discretion as to the means to be employed, and the time when repairs are to be made, yet he is not entitled to the immunity of a judicial officer, or exempted from liability for an improper discharge of his duty. Conroy v. Gale, (1871) 5 Lans. 344, affirmed 47 N. Y. 665; Hicks v. Dorn, (1870) 42 N. Y. 47.

One is an independent contractor who has contracted to build a canal section, who furnishes his own men, tools, and machinery, and has supervision and control of the work. Where it was not shown that such contractor was incompetent or that there was any inherent danger in the work itself, the state is not liable for injuries to a person who falls from an insufficiently guarded temporary road constructed by the contractor, where the state had the power to discontinue temporarily the use of a highway during the progress of the work. Coolidge v. State, 61 Misc. 38, 114 N. Y. S. 553.

§ 144. Security for performance of contract.— Every contractor entering into any written contract for construction, improvement, repair or maintenance of or upon a canal, or for the furnishing of materials, tools or labor therefor, shall give satisfactory security to the superintendent of public works for the faithful performance of such contract. If any such contractor shall fail or neglect or refuse to perform his contract, or to comply with the requirements of the superintendent of public works or

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the assistant superintendent or any engineer, superintendent of repairs or other officer having in charge the supervision thereof, made in conformity with such contract, the superintendent of public works may declare such contract abandoned, and such contractor shall be excluded from any interest in any further contract in relation to the same and all similar objects.

This is section 134 of the original Canal Law of 1894.

Refund of security.— Money deposited as security for the performance of canal work cannot, in the absence of legislation, be refunded, although the work specified in the contract has been suspended by order of state officials. Op. Atty.-Gen. (1898) 216. Where a contract is forfeited, money deposited as security therefor cannot be used by the superintendent of public works in completing the work. Op. Atty.-Gen. (1898) 181.

§ 145. Security for payment of laborers.— The superintendent of public works or assistant superintendent having charge, shall also require and take from the contractor, a bond with at least two good and sufficient sureties, conditioned that such contractor will well and truly pay in full, at least once in each month, all laborers employed by him on the work specified in such contract, which shall be duly acknowledged and filed in the office of the clerk of the county wherein such contract or work is to be performed, and if partly in two or more counties, such bond or a certified copy thereof shall be filed in the clerk's office of each county.

Actions may be brought for a breach of such bond by any laborer not paid in accordance with its terms, and the commencement or maintenance of an action by one or more laborers thereon shall not be a bar to the commencement and maintenance of other actions thereon by other laborers. No action shall be maintained against the sureties unless brought within thirty days after the completion of the labor the payment of which is secured by the bond.

This is section 135 of the original Canal Law of 1894.

Meaning of "laborers."— The term "laborers" means actual laborers who perform work on canals, and does not include contractors, jobbers, or subcontractors of portions of the work. Swift v. Kingsley, (1857) 24 Barb. 541. The term has been held not to include laborers employed by a subcontractor. McCluskey v. Cromwell, (1854) 11 N. Y. 593.

"Completion of the labor."— In construing this section the court said: "The single and commendable purpose of the statute is to secure to every laborer on the public works prompt and regular payment of his wages, 'at least once in each month.' This purpose would be entirely defeated if each man's remedy against the sureties in the bond were postponed until every man's labor on the entire work was completed, which might not be in many

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months, or even years. The whole tenor of the statute is opposed to such a construction. It is careful to afford every facility for the prompt and easy enforcement of the remedy provided. It provides for proof at hand in every case, and a ready and inexpensive tribunal, and that each man shall have his action, unaffected by whatever action has been taken by others. All its provisions indicate the purpose to give an individual security and an individual remedy." Hubbard v. Rodger, (1894) 75 Hun 220, 27 N. Y. S. 47.

§ 146. Construction to be kept distinct from repairs.—All work connected with the enlargement and improvement of any canal, done under contracts made by the superintendent of public works, shall be kept distinct, as far as practicable, from the ordinary repairs of the canal.

This is section 136 of the original Canal Law of 1894.

§ 147. Materials and tools for ordinary repairs.— When in his opinion, the interests of the state will be promoted thereby, the superintendent of public works may direct the superintendent of canal repairs to purchase materials and tools for the ordinary repair of the canals without advertising for the same. He is not bound to accept proposals therefor unless he deems it for the interest of the state.

This is section 137 of the original Canal Law of 1894.

§ 148. When certificate of superintendent of public works required.— Except in case of a sudden break or breach in the canal during navigation, requiring immediate action before the superintendent of public works or assistant superintendent in charge can be consulted, no superintendent of canal repairs shall contract for the purchase or delivery of tools, implements, materials, boats or other matters or things to be used in the repairs of the canals, unless the superintendent of public works or such assistant superintendent shall make a certificate designating the number and quantities with the prices to be paid therefor. A superintendent of repairs violating any provision of this section or applying any money received on a detailed estimate by him to any object, work or purpose, other than as specially mentioned or described in such estimate, shall be removed from office.

This is section 138 of the original Canal Law of 1894.

§ 149. Inspection of materials and tools furnished.— All materials and tools purchased and delivered or offered for delivery for use in the maintenance and repair of the canals, shall be

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carefully and thoroughly examined and inspected by the superintendent of public works or assistant superintendent, or superintendent of canal repairs in charge of the work, or other person designated by the superintendent of public works, and the person other than the superintendent of public works making such examination and inspection, shall immediately make a sworn report thereof to the superintendent of public works, stating the quantity, quality and amount or number of the materials or tools examined and received or rejected.

No payment shall be made for any materials or tools, except such as are accepted as being in conformity with the contract under which they were delivered.

This is section 139 of the original Canal Law of 1894.

§ 150. Proceedings in case of neglect or refusal to perform contract.— If any such contractor fails, neglects or refuses to perform his contract or to comply with any requirement, the superintendent of public works may procure all such tools and materials to be furnished, therein provided for, as may be necessary for immediate use, and until such contract is relet, and such contractor and his sureties shall be liable for all damages which may result from such neglect or refusal, together with the necessary extra cost, over and above the contract price, of the articles and tools so procured. All contracts shall contain a provision for the speedy and equitable adjustment of all questions that may arise relative to their performance.

This is section 140 of the original Canal Law of 1894.

§ 151. Exemption of materials from execution.—All materials procured or partly procured under a contract with the superintendent of public works, shall be exempt from execution, but the superintendent shall pay the moneys due for such materials to any judgment creditor of the contractor under whose execution such materials might otherwise have been sold, on production to him of due proof that such execution would have so attached, and such payments shall be valid payments on the contract.

This is section 141 of the original Canal Law of 1894.

§ 152. Certain directions to be in writing.—All orders and directions given by any superintendent of repairs or engineer to a contractor shall be in writing.

This is section 142 of the original Canal Law of 1894.

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§ 153. Drafts of money by the superintendent for the payment of contracts.— The superintendent of public works may draw on the comptroller for any sum to be paid to a contractor on his contract, and if a copy of the contract shall have been duly filed in the office of the comptroller, and a receipt of the contractor for such drafts filed in the same office, the comptroller shall draw a warrant on the treasury for the amount of such draft. The superintendent of public works shall not be allowed to have in his hands at any one time more than one hundred and fifty thousand dollars, and every sum advanced to or received by him shall be deemed to remain in his hands until its application shall have been properly accounted for to the comptroller.

This is substantially section 143 of the original Canal Law of 1894, as amended by L. 1900, ch. 211; L. 1906, ch. 257. Since its incorporation in the Consolidated Laws it has been amended by L. 1913, ch. 241. Before the amendment the section read "one hundred thousand dollars."

§ 154. Verification of estimates and measurements before payment.— No money shall be advanced or paid to any canal contractor on his contract except on the sworn certificate of an engineer in such form as the comptroller prescribes, that he has actually measured the work or material included in the certificate, and believes that the quantities therein stated do not exceed the amounts actually performed or delivered by the contractor. Such sworn certificate shall be given to the superintendent of public works and shall accompany the receipt of the contractor when presented to the comptroller for audit. The comptroller shall reject and refuse payment of every draft or certificate of the superintendent of public works or any other claim against the state, founded on the certificate of measurement of an engineer in the employment of the state, unless such estimate and measurement is sworn to and verified as prescribed in this section.

This is section 144 of the original Canal Law of 1894.

ARTICLE 10

Navigation

Section 170. Definitions of "float" and "master."
171. Statistics to be furnished.
172. Registry of canal boats.
173. Clearances and ownership.

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Section 174. Bills of lading.
175. Regulations with respect to clearances.
176. Copies of clearances.
177. Assignment of berths for loading or unloading.
178. Name of mortgaged canal boat not to be changed.
179. Speed and meeting of boats and preference in passing.
180. Passage of locks.
181. Prohibition of use of setting poles; knife on bow.
182. Obstruction of navigation.
183. Seizure of obstructions.
184. Unlawful conversion of personal property by boatmen.
185. Wharves and basins.
186. Prohibition against driving on tow-paths or faster than a walk over bridges.
187. Quantity of water to be taken into level; waste-weirs.
188. Regulations relating to the harbor at Whitehall.
189. Floating elevators.
190. Liability of boat for penalties; detention and sale thereof.
191. When bond must be given to secure detention of boat.
192. Actions for penalties.

§ 170. Definitions of "float" and "master."— The term "**float**" in this article includes every boat, vessel, raft or floating thing navigated on the canals or moved thereupon, under the direction of some person having the charge thereof; and the term "**master**" includes every person having for the time the charge, control or direction of any such float.

This is section 160 of the original Canal Law of 1894.

For definition of navigation, see NAVIGATION LAW, § 2. *Canal as navigable water*, see note in 17 Ann. Cas. 349.

Right of state to promote navigation.— Grants of land under navigable streams, and the franchises and licenses having to do therewith, are subject to a reserved right of the state to do whatever is reasonably necessary to preserve and promote the public right of navigation; and the rights of owners of land bordering on a navigable stream must yield whenever the state desires to improve the stream for navigation purposes. Lehigh Val. R. Co. v. Canal Board, (1911) 146 App. Div. 151, 130 N. Y. S. 978.

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§ 171. Statistics to be furnished.— The master of any boat or float shall, on the request of any person designated by the superintendent to procure the statistics required to be reported by him to the legislature, deliver to such person a true statement of the quality and description of the lading of such boat or float, specifying the place from which it departed and to which it is destined. Such master may have such boat or float and its load weighed at some weigh-lock selected by the superintendent and duplicate reports of such weights shall be furnished to him on payment of such reasonable fee, to be fixed by the superintendent, as will reimburse the state for the actual expenses thereof, and the superintendent may at any time require any such boat or float and its load to be so weighed. Any master who refuses to comply with any provision of this section shall forfeit to the people of the state the sum of twenty-five dollars, to be collected by any person designated to collect such statistics, and paid to the state treasurer.

This is substantially section 161 of the original Canal Law of 1894.
Delivery of false bill of lading to canal collector, see PENAL LAW, § 160.
Weighmaster making false entry of weight of canal boat, see PENAL LAW, § 461.

§ 172. Registry of canal boats.— The owner of every boat navigating the canals shall deliver to the officer or person designated by the superintendent of public works to receive the same when the first clearance of the boat is demanded, a certificate of registry containing the name of the owner, his residence, the name of the boat and of the place where it is owned, which shall be signed by the owner, if a resident of this state, if not, by the master of the boat as the owner thereof.

If the master of a boat the owner of which resides out of the state is changed after the delivery of such certificate, the new master shall sign and deliver a proper certificate of registry to the office[1] or person so designated. The officer or designated person receiving a certificate of registry, shall execute and deliver to the master of the boat an acknowledgment of the receipt thereof, and without delay transmit the certificate to the superintendent of public works.

The superintendent of public works shall make a registry of all boats navigating the canals, which shall be kept on file in his office

[1] So in original.

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and be open to public inspection during office hours. The name of a registered boat shall not be changed without the order of the superintendent of public works.

If a resident of the state produces to the superintendent of public works due proof of the transfer of a registered boat, and delivers to him a new certificate of registry, he shall change the registry of the boat to correspond with the new certificate.

The superintendent of public works shall, from time to time, transmit to the several collectors of canal statistics a certified copy of the register of boats in his office and of the several changes made therein.

This is substantially section 162 of the original Canal Law of 1894.

§ 173. Clearances and ownership.— No clearance shall be granted to any boat, unless the officer or other person, of whom it is required, has evidence that it is duly registered; or if it be not registered, until the master thereof delivers to such officer or person a proper certificate of registry, or exhibits to him the receipt of some other authorized officer for such certificate.

Each boat shall have a separate clearance, and no part of the cargo shall be cleared to a place beyond that to which the boat is cleared.

No boat shall receive a clearance or be permitted to pass on any canal which has not the name thereof and of the place where it is owned, corresponding to its certificate of registry then in force, printed in a conspicuous and prominent part on the outside of the boat in letters of at least four inches in height.

For the purpose of conforming to the rules and regulations for the navigation and maintenance of the canals, the person named in the certificate of registry as the owner of a boat shall be deemed its owner, and every owner of a boat who changes its name from that stated in the certificate, without the order of the superintendent of public works, and every master who enters or reports a boat at any office by a different name than that stated in the certificate, shall for every such offense forfeit to the state the sum of twenty-five dollars.

This is substantially section 163 of the original Canal Law of 1894.

§ 174. Bills of lading.—A bill of lading containing a just and true account of all property conveyed in any boat upon a canal,

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signed by the master of the boat and by the consignor of the property, and stating the names of the places upon the canal where any portion of the property was shipped, of the place for which it is intended to be cleared, the names, description and weight of all the articles of such property, or the number of such articles and the number of feet of each article if bought or sold by the foot, shall be exhibited by the master of the boat to any collector of canal statistics requiring the same and to any officer or person of whom a clearance is required, and to every officer or person designated by the superintendent of public works for that purpose, at a place where any portion of the cargo is unladen or any additional cargo received, or if there is no such officer or person at such place, to such officer or person whose office shall be next in order in the course of the voyage. If there be no such office at the place where any article is laden, nor at the place of their delivery, nor at any intermediate place, the master of the boat shall within ten days after the delivery of such articles exhibit the bill of lading thereof to such officer or designated person whose office shall be nearest to the place of such delivery, and every master omitting to exhibit such bill within such period, shall, for every offense, forfeit to the state the sum of twenty-five dollars.

Every officer or person receiving a bill of lading may require the master exhibiting it to verify it by his oath. No clearance of a boat or cargo shall be granted or issued by any officer or person except upon the production to him of a bill of lading as herein required.

This is section 164 of the original Canal Law of 1894.
Unclaimed freight and baggage, see GENERAL BUSINESS LAW, §§ 280–287.
Delivery of false bill of lading, see PENAL LAW, § 460.

§ 175. Regulations with respect to clearances.— No boat shall proceed beyond the place to which it is cleared, nor unload any of its cargo, before or after its arrival, at the place from which such articles are cleared, nor proceed beyond such place until the master thereof delivers the clearance of such boat or articles to the officer or person designated by the superintendent of public works to receive the same, at the place for which they are cleared, or if there be no such officer or person at such place, to the last officer or person designated for that purpose, whose office shall be passed by the boat in the order of its voyage, and receives a permit from such collector to proceed to the place to which it is cleared.

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Every master omitting to deliver a clearance to the officer or person to whom it ought to be delivered shall forfeit to the state the sum of twenty-five dollars.

This is section 165 of the original Canal Law of 1894.

§ 176. Copies of clearances.— Every officer or person issuing a clearance or with whom a clearance is filed shall, when requested, give a certified copy thereof, with any additional cargo entered thereupon, and the several indorsements, if any, which certified copy shall have the same validity and effect as the original clearance of which it is a copy. Every such person or officer shall demand and receive for such certified copy, not exceeding two folios, six cents from the person requesting the same, and fifteen cents for all copies exceeding two folios, and shall account to the comptroller for all moneys which shall be so received, at such time and in such manner as the superintendent of public works shall direct.

This is section 166 of the original Canal Law of 1894.

§ 177. Assignment of berths for loading or unloading.—An officer or person designated by the superintendent of public works for that purpose, and, if no such officer or person be present, any canal superintendent or superintendent of repairs may assign berths to all boats while loading or unloading at any landing place upon a canal and determine disputes concerning the same.

This is section 167 of the original Canal Law of 1894.
Villages may license the doing of retail business from canal boats, **VILLAGE LAW, § 91.** ***City licenses for retailing goods on boats,*** **GENERAL CITY LAW, § 9.**

§ 178. Name of mortgaged canal boat not to be changed.— The superintendent of public works shall not grant permission to change the name or hailing place of any canal boat, steam tug, scow or other craft navigating the canals, on which there is an existing lien or mortgage filed in his office, unless it shall be necessary to make the name or hailing place conform to the United States custom house regulations, by reason of a change of name after having been registered at the custom house; and the owner or owners of any boat, steam tug, scow or other craft found navigating the canals of this state, the registered name or hailing place of which shall have been changed without

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the written permission of the superintendent of public works, shall, upon due proof thereof, be subject to a penalty to the people of the state of not less than fifty dollars nor more than three hundred dollars, recoverable by the attorney-general in an action in any court of competent jurisdiction.

The subject matter of this section was section 168 of the original Canal Law of 1894. The section has been amended to read as above by L. 1910, ch. 181. It formerly read as follows: "The superintendent of public works shall not grant permission to change the name or hailing place of any canal boat, steam tug, scow or other craft navigating the canals, on which there is an existing lien or mortgage filed in the comptroller's office, unless it shall be necessary to make the name or hailing place conform to the United States custom house regulations, by reason of a change of name after having been registered at the custom house; and any boat, steam tug, scow or other craft found navigating the canals of this state, the registered name or hailing place of which shall have been changed without the written permission of the superintendent of public works, shall, upon due proof thereof, be subject to a penalty of not less than fifty dollars nor more than three hundred dollars."

Lien Law.— Liens on canal boats. Lien Law, §§ 80–107. A canal boat is a vessel within the meaning of the term "or any other vessel," as used in section 80 of the Lien Law. Emmons v. Wheeler, (1875) 3 Hun 545; Fralick v. Betts, (1878) 13 Hun 632. Chattel mortgages on canal boats must be filed in the comptroller's office and need not be filed elsewhere. Lien Law, § 232. Chattel mortgages on canal boats need not be refiled at the end of one year from the date of the original filing. Op. Atty.-Gen. (1902) 162. Duration of mortgage liens on canal boats. Lien Law, § 236.

Change of name.— The superintendent of public works should not grant permission to change the name of any craft navigating the canals, upon which a mortgage lien has been filed, so long as the debt which the mortgage secures is enforceable. Op. Atty.-Gen. (1913) 199.

§ 179. Speed and meeting of boats and preference in passing. — No float shall move in any canal faster than at the rate of four miles an hour without a permission in writing from the superintendent of public works; except that upon any of the enlarged canals, a boat may move at a rate of speed not exceeding six miles an hour, to be fixed by the superintendent of public works.

The master of a float meeting another float, shall turn to the right, so as to be wholly on the right side of the center of the canal.

The master of a float going from the navigable waters of the Hudson river, approaching any place in a canal less than thirty feet wide upon the surface, or which will not safely permit its passing another float approaching the same place, shall stop at such distance from such narrow place as may be convenient for the floats going towards such navigable waters to pass through such place, and there wait until such passage is effected.

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When a boat used chiefly for the conveyance of persons overtakes any other float not used chiefly for that purpose, the master of the latter shall give to the former every practicable facility for passing, and, if necessary, shall stop until the former has fully passed.

When any boat propelled or towed by steam, meets or overtakes a boat or float not so propelled or towed and not waiting its turn for lockage, the master of the latter shall turn out so as to allow the former to pass on the berme side of the canal.

Every master or boatman violating any provision of this section shall, for each offense, forfeit to the state the sum of ten dollars.

This is section 169 of the original Canal Law of 1894.

Construction of section.— The provisions of this section apply to the navigation of canals by steam vessels and are to be construed with reference to section 11 of the Navigation Law. Wagner v. Buffalo, etc., Transit Co., (1901) 59 App. Div. 419, 69 N. Y. S. 113, affirmed without opinion 172 N. Y. 634, 65 N. E. 1123.

Erroneous signal to pass.— A signal to pass on the left side, when improper, need not be complied with. Wagner v. Buffalo, etc., Transit Co., (1901) 59 App. Div. 419, 69 N. Y. S. 113, affirmed without opinion 172 N. Y. 634, 65 N. E. 1123.

§ 180. Passage of locks.— Every float within one hundred yards of a lock, if upon the same level that the water in the lock then is, shall be permitted to pass the lock before any other float not upon the same level. Questions as to which of two or more floats may first pass through a lock shall be determined by the lock-keeper, and the passage made in the manner and order directed by him.

The owner, master or navigator of any float, refusing to conform to any such determination of a lock-keeper, or who detains or unnecessarily hinders the passage of any float through a lock, in violation of any provision of this section, shall, for each offense, forfeit to the state the sum of twenty-five dollars.

This is section 170 of the original Canal Law of 1894.

§ 181. Prohibition of use of setting poles; knife on bow.— No person navigating any canal shall use any setting pole or shaft, pointed with iron or other metal. No covered or decked boat shall navigate any canal without a knife or sharp metallic instrument so affixed upon the stem or bow of the boat as to cut apart any tow rope which might otherwise pass over such bow.

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Every owner or master of a boat failing to comply with any provision of this section shall, for every such failure, forfeit to the state the sum of twenty-five dollars.

This is section 171 of the original Canal Law of 1894.

§ 182. Obstruction of navigation.—A person who obstructs the navigation of a canal by the improper mooring, management or conduct of a boat or floating thing, or by sinking a vessel, timber, stone, earth or other thing to the bottom thereof, or by placing any obstruction upon the towing path thereof, or on the bank opposite the towing path, shall forfeit to the state the sum of twenty-five dollars for every such obstruction.

This is section 172 of the original Canal Law of 1894.

The unlawful interference with or obstruction of a canal constitutes a public nuisance, and is punishable as a misdemeanor. Penal Law, § 1530.

Disposal of sewer drainage.— Canal officials have authority to compel public or private owners of sewers to make such disposal of sewage as will in no way interfere with canal navigation or streams to be canalized in the course of barge canal construction. Op. Atty.-Gen.. (1909) 829.

Cable across Mohawk river.— The maintenance of a rope or cable across the Mohawk river for the operation of a ferry is an unlawful obstruction to navigation and can be removed at any time by the canal authorities. Op. Atty.-Gen. (1907) 350.

§ 183. Seizure of obstructions.— The superintendent of public works, his assistants, deputy and every superintendent or agent employed upon the canals may seize all boats, rafts, logs or any floating or sunken thing found in a canal, or any article not under the care or charge of any person, found upon the towpath thereof and sell the same at public auction after giving ten days' written notice of the sale, conspicuously posted at two public places nearest to the place where such boat, logs, floating or sunken thing or other article is found, unless before the time of sale the owner of the article appears and claims the same and pays the cost of seizure and expenses of removal.

The avails of such sale shall be accounted for by the officer making the same to the commissioners of the canal fund, who may, on the application of the owner and due proof of ownership, pay over such proceeds to him after deducting the forfeiture and all costs and reasonable charges thereon.

If the navigation of a canal is interrupted or endangered, the superintendent of public works may cut up, destroy or remove any canal boat, vessel or other thing in or partly in the canal,

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and, if the same is in the canal without the fault of the owner, the damages sustained by him in consequence of such destruction shall be paid to him, and if the superintendent is unable to agree with the owner as to the amount of such damages, they shall be ascertained and determined in the same manner as damages for the temporary appropriation of lands for the repairs of the canals.

This is section 173 of the original Canal Law of 1894.

Power to retain vessel as security.— The superintendent of a canal section may retain possession of a sunken boat raised by him, until the amount of his claim is paid. Op. Atty.-Gen. (1903) 368.

§ 184. **Unlawful conversion of personal property by boatmen.** — If a boatman or any person on board of a boat upon any canal takes, without right, any rails, boards, planks, staves, firewood or fencing posts from the banks or vicinity of the canals, the master of the boat shall forfeit to the owner treble the value of the property taken, and possession on board the boat shall be presumptive evidence of the taking. A person or boatman violating any provision of this section shall forfeit twenty-five dollars to any person who will prosecute therefor.

This is section 174 of the original Canal Law of 1894.

§ 185. **Wharves and basins.**— No person without the written permission of the superintendent of public works or an assistant superintendent in charge, shall construct any wharf, basin or watering place in any canal, or make or apply any device for the purpose of taking water from a canal. Every wharf, basin, watering place or device constructed with such permission shall be held during the pleasure of the superintendent of public works and be subject to his control.

Every person constructing any such wharf, basin, watering place or device without such permission, or neglecting or refusing to conform to the direction of the superintendent granting the permission, shall for each offense forfeit to the state the sum of twenty-five dollars, and the superintendent of public works may remove or destroy the construction illegally made at the expense of the person making it.

This is section 175 of the original Canal Law of 1894.

Easement in canal basin.— An easement in waters of state canals cannot be obtained by prescription, whether adverse or by permission, and a fifty years' user of a basin connected with the Erie canal does not confer any prescriptive right to such connection. Burbank v. Fay, (1875) 65 N. Y. 57.

Dry docks.— Permission by the canal board to construct dry docks on state lands may be revoked at any time. Mattoon v. Munroe, (1880) 21 Hun 74.

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§ 186. Prohibition against driving on tow-paths or faster than a walk over bridges.—A person, not engaged in towing a boat or other float upon or conveying articles unladen or to be laden from or to a canal, who leads, drives or rides any horse, ox, mule, ass or other cattle upon the towing path of a canal or upon the bank opposite to such towing path, within the blue line of the canal, shall forfeit to the state the sum of five dollars. This provision shall not apply to a person authorized by any canal superintendent or canal contractor to enter upon the towing path or banks opposite thereto for the purpose of examining or repairing the same. Whenever any canal or canal feeder is constructed through or upon any lands so as to render such lands inaccessible from a highway, except by the erection of a bridge over such canal or feeder, the owner of such lands, on permission being obtained from the superintendent of public works, may use so much of the towing path or the banks opposite thereto, or the banks of any feeder, as may be necessary to pass to and from such lands to a public highway, without damage to such banks or interference to navigation. Such use shall cease whenever the state or local authorities construct suitable bridges over said canals and feeders, enabling such owner to pass to and from such lands to a public highway.

A person who leads, rides or drives any horse or mule faster than a walk over any bridge belonging to or under the control of the state, over any canal, canal feeder, stream or river thereof, or drives any cattle across any such bridge at a faster rate than a walk, or permits more than twenty-five cattle to be upon such bridge at any one time, shall forfeit to the state the sum of fifteen dollars, to be sued for by the superintendent of canal repairs, and when recovered to be accounted for by him to the commissioners of the canal fund.

This is substantially section 176 of the original Canal Law of 1894.

Power of resident engineer to use towpath.—A resident engineer has authority to use the towpath of a canal in the performance of his duties in constructing the barge canal. Op. Atty.-Gen. (1908) 261.

Use of towpath as highway.—Towpaths are constructed within the so-called blue line of the canal, upon property owned by the state for canal purposes, and are a necessary part of the canal system; and it is clear from the language of the section, that the towpath is regarded as canal property and not as a public highway, and restricts the power of the superintendent of public works in issuing permits where it is used for any purpose except canal purposes. Op. Atty -Gen. (1912) 514.

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§ 187. Quantity of water to be taken into level; waste-weirs. — No more water shall be taken into any level of any canal than shall be sufficient to supply such level during the days of the greatest business, and to supply any other level of the canal or other public work of the state dependent upon such level for a supply of water.

Every waste-weir upon the same level as the canal shall be constructed as nearly as may be consistent with the safety and convenience of the canals, of the same height, but in all cases so as to leave a depth of at least four feet of water in the level; and at least one waste-gate shall be constructed as nearly opposite to the mouth of every feeder taken into the canal as the convenient discharge of the water will permit.

This is section 177 of the original Canal Law of 1894.

§ 188. Regulations relating to the harbor at Whitehall. — The inspector and measurer of lumber and of boats and their cargoes at Whitehall, in the county of Washington, shall regulate and station all vessels, boats, rafts and other craft in the harbor of Whitehall, within the corporate limits of the village of Whitehall, and from time to time remove such vessels, boats or other crafts as may not be employed or detained in discharging or receiving cargoes or loading, to accommodate other vessels, boats or other craft to load or unload; prevent all vessels, boats or other craft from obstructing for an unreasonable time the entrance of boats, rafts or other craft into the Champlain canal at Whitehall, and determine how far and in what instances the masters and others having charge of such vessels, boats, rafts or other craft shall accommodate each other in their respective situations and locations in such harbor.

A master or other person, having charge or control of any vessel, boat or raft within such limits, who neglects or refuses to obey the lawful direction of such inspector, or a person who resists or opposes him in the execution of his duties shall, for every such offense, forfeit and pay to the people of the state the sum of twenty-five dollars.

This is section 178 of the original Canal Law of 1894.

§ 189. Floating elevators. — Any person, joint company or stock corporation owning or leasing, in whole or in part, any floating

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elevator used for loading grain, coal or sand, shall, upon application to and in the discretion of the superintendent of public works, be assigned a place for and permitted to keep said floating elevator in the waters, basins or canals of this state at such point as may be most convenient for and for such period of time as may be necessary for the transaction of the business of loading or unloading grain, coal or sand shipped or to be shipped on the canals; provided, however, that no obstruction to the free and uninterrupted use of the canals by boats navigating thereon shall be permitted. While such elevators are in operation, there shall be used in connection therewith an apron or other device to prevent such material from falling into such waters, basins or canals.

The original Canal Law of 1894 did not contain this matter. It came from L. 1896, ch. 881, and was inserted here by the board of statutory consolidation of 1907.

Fees and charges for elevators and warehouses, see GENERAL BUSINESS LAW, § 396.

§ 190. Liability of boat for penalty; detention and sale thereof. Every penalty and forfeiture prescribed by this article against the owner, master, boatman, navigator or other person having charge of any float, when incurred, shall be chargeable on such float, and an action for the recovery thereof may be brought against any person in the possession or having charge thereof at the time when it is commenced; and any court or judicial officer issuing the process for the commencement of such an action, may, by a clause to be inserted therein, direct the officer executing the same to detain such boat or float and the furniture and horses belonging thereto until such action is determined, or until adequate security is given for the payment of any judgment recovered. If such security be given, or the defendant in the action prevail, such court or officer shall order the boat or other float and property detained to be released. If no such security be given, and a judgment be recovered for such penalty or forfeiture, and not immediately paid, an execution shall be issued under which the property so detained may be sold in like manner as if the judgment had been obtained against the owner thereof.

This is section 179 of the original Canal Law of 1894.

§ 191. When bond must be given to secure detention of boat. — Whenever an action shall be brought to recover any penalty

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imposed by law for taking any rails, boards, planks or staves, from the banks or vicinity of a canal, in which a justice is authorized to direct the detention of any canal boat, he shall not indorse such direction on any warrant, unless a bond, as prescribed in this section, shall be executed and delivered to such justice. Such bond shall be in the penalty of at least one hundred dollars, with one or more sureties, to be approved by such justice, conditioned that such action shall be prosecuted to judgment with all convenient speed, and that if judgment be rendered in favor of the defendant, the obligors will pay the costs and charges which shall be adjudged against the plaintiff, and all damages which may ensue from the detention of such boat and the cargo thereof, and the crew navigating the same.

The subject matter of this section is not found in the original Canal Law of 1894. It comes from R. S. pt. 3, ch. 2, tit. 4, art. 2, secs. 23–24.

§ 192. **Actions for penalties.**—All actions for penalties and forfeitures imposed in this chapter, or for damages, in behalf of the state, shall be prosecuted in the name of the people of this state, by such persons and in such manner as the commissioners of the canal fund, in their regulations, direct. All money recovered in such actions shall be accounted for and paid over to such commissioners.

The imposition or recovery of any such penalty or forfeiture shall not be a bar to the recovery of any damages resulting to the state or an individual, because of such violation.

This is section 180 of the original Canal Law of 1894.

ARTICLE 11

Laws Repealed; When to Take Effect

Section 200. Laws repealed.
201. When to take effect.

§ 200. **Laws repealed.**— Of the laws enumerated in the schedule hereto annexed, that portion specified in the last column is hereby repealed.

§ 201. **When to take effect.**— This chapter shall take effect immediately.

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Schedule of Laws Repealed.

Revised Statutes.... Part 1, chapter 9, title 2, sections 10–12.
Revised Statutes.... Part 1, chapter 9, title 9, ...All
Revised Statutes.... Part 3, chapter 2, title 4, sections 23, 24.

Laws of	Chapter	Section
1811.....	188.....	All
1812.....	231.....	All
1814.....	200.....	43
1816.....	237.....	All
1817.....	262.....	2–4, 7, 8
1819.....	105.....	All
1820.....	202.....	All
1821.....	36.....	2–6
1821.....	240.....	14
1823.....	112.....	All
1823.....	218.....	All
1824.....	230.....	All
1824.....	279.....	All
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NOTES TO SCHEDULE OF REPEALS

When a statute has been specifically repealed, that statute and the repealing statute are given without an explanatory note.

10. R. S., Pt. 1, Ch. 5, Tit. 1, § 1, pt.— Provides that there shall be *two* canal appraisers. L. 1836, ch. 287, § 13, provides that there shall be *three* canal appraisers. Section 13 provides that so much of statute affected as is inconsistent with this act is repealed.

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11. The following statutes have been amended so as to read as follows and are superseded and repealed by the amending statute:

R. S., Pt. 1, Ch. 9, Tit. 9, §§ 17, 18, 84, 87, 89, 121, 149, 181, 186		
Laws	Chap.	Sec.
1853	52	1
1854	332	9
1862	169	3, 4
1865	727	
1875	260	1, last ¶
1879	269	1, ¶ 11
1879	331	1, 2
1880	493	3
1884	336	1
1894	338	11, 22, 23, 25, 26, 27, 37, 50, ¶ 6, 51, 54, 75, 131, 143
1900	211	

Where the foregoing statutes have been repealed by being amended "to read as follows," except the section "This act shall take effect immediately," this section is included in the word "all" under the heading "Statutes hereby repealed."

12. R. S., Pt. 1, Ch. 9, Tit. 9, Art. 3, § 45, ¶ 1; §§ 47 pt., 54. Section 45, ¶ 1, provides that there shall be *two* canal appraisers who, being associated with any acting canal commissioner, shall be appraisers of damages. * * * L. 1836, ch. 287, §§ 1, 8, provides there shall be *three* canal appraisers, and that thereafter no canal commissioner shall be associated with them in making their appraisals. Section 13 provides that so much of statute affected as is inconsistent with this act is repealed.

Section 47, part, provides that an acting canal commissioner shall sit with the canal appraisers in making appraisals. L. 1836, ch. 287, § 8, provides that no canal commissioner shall be associated with the canal appraisers. * * * Section 13 provides that so much of the statute affected as is inconsistent with this act is repealed.

Section 54 fixes pay of canal appraisers at $3.00 per day. L. 1836, ch. 287, § 12, fixes pay of canal appraisers at $4.00 per day. Section 13 provides that so much of statute affected as is inconsistent with this act is repealed.

13. R. S., Pt. 1, Ch. 9, Tit. 9, Art. 7, §§ 152, 154.— Section 152 limits rate of speed of canal boats to *four* miles per hour, without permission from canal commissioners in writing. L. 1861, ch. 124, § 1, provides that speed of canal boats may be

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fixed by the canal board, not exceeding *six* miles per hour. Section 7 provides that all acts and parts of acts inconsistent with this act are repealed.

Section 154 provides that boats meeting shall turn out towards the right hand. L. 1861, ch. 124, § 2, provides that when a boat propelled by steam meets or overtakes another boat not so propelled, each boat shall turn out so as to allow the steamboat to pass on the berme side of the canal. Section 7 provides that all acts and parts of acts inconsistent with this act are repealed.

14. R. S., Pt. 3, Ch. 2, Tit. 4, Art. 2, §§ 23, 24.— Consolidated in Canal Law, § 191.

15. As the statutes covered by express repealing acts have been repealed by the Consolidated Laws, the repealing statutes have been recommended for repeal.

16. L. 1816, Ch. 237.—Appoints commissioners to consider measures to facilitate and effect communications by means of canals and locks between the Hudson river and Lake Erie. Temporary and obsolete.

17. L. 1824, Ch. 230.—Authorizes a survey for a canal from St. Lawrence river to Lake Champlain to be made by the canal commissioners and requires said commissioners to make a report in relation thereto at the next meeting of the legislature. Temporary and obsolete.

18. L. 1824, Ch. 279.— Relates to the improvement of the navigation of the Oswego river and connecting the same with the Erie canal. Temporary and obsolete.

19. L. 1825, Ch. 236.— Provides for the general survey of numerous canal routes through the state and for estimates to be made by the canal commissioners for their construction. Temporary and obsolete.

20. L. 1825, Ch. 271.—Authorizes the construction of the Seneca and Cayuga canal, also authorizes the canal commissioners to acquire the rights of the Seneca Lock Navigation Company. Temporary and obsolete.

21. L. 1827, Ch. 237. — Revives and continues L. 1825, ch. 275, so far as same limits time for filing certain claims, for the period of one year from April 1, 1827. Obsolete.

22. L. 1828, Ch. 20, § 15, ¶ 51, 2d meeting.— This was inserted in R. S., pt. 3, ch. 2, tit. 4, §§ 23, 24, and became a part thereof, and as such was consolidated as § 191, Canal Law.

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23. L. 1828, Ch. 290.— Relates to the beginning and construction of the Cayuga and Seneca canal. Temporary and obsolete.

24. L. 1829, Ch. 48.— Relates to damages by break in canal occurring "within two years prior to the passage of this act," claims for which damages shall be filed within one year after passage of this act. Obsolete. Section 7 provides for a penalty of $25.00 for failing to appear in pursuance to a subpoena of the canal appraisers. L. 1836, ch. 287, § 3, fixes the penalty at $50.00. Section 13 provides that so much of statute affected as is inconsistent with this act is repealed.

25. L. 1829, Ch. 72.— Conditionally authorizes the construction of the Chenango canal and requires a report to be made to legislature. Temporary and obsolete.

26. L. 1829, Ch. 120.—Authorizes the construction of the Crooked Lake canal. Temporary and obsolete.

27. L. 1829, Ch. 135.—Authorizes canal commissioners to construct a canal from head of Seneca lake to Chemung river. Obsolete.

28. L. 1829, Ch. 376, § 3.— Relates to pay of canal commissioners. Obsolete.

29. L. 1832, Ch. 164, § 2.— Extends powers and duties conferred upon canal board by R. S., pt. 1, ch. 9, tit. 9, art. 4. Canal Law, 1894, ch. 338, §§ 10–23, 93, contained similar provisions. Abrogated and obsolete.

30. L. 1833, Ch. 32.— Relates to the beginning and construction of the Chenango canal. Temporary and obsolete.

31. L. 1833, Ch. 80.—Relates to canal commissioners. Obsolete.

32. L. 1834, Ch. 46.—Act authorizing construction of Chenango canal. Temporary and obsolete.

33. L. 1834, Ch. 139.—Act authorizing the survey of the Black River canal from High Falls on the Black river to the Erie canal. Requires a report to be made thereon by the commissioners to the next session of the legislature. Temporary and obsolete.

34. L. 1834, Ch. 215.—Authorizes a survey of a canal route from Rochester to Olean. Temporary and obsolete.

35. L. 1836, Ch. 84.— Relates to pay of acting canal commissioners. Obsolete.

36. L. 1836, Ch. 157.— Provides for the construction of the Black River canal. Obsolete.

37. L. 1836, Ch. 257.—Authorizes construction of Genesee

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Valley canal. Canal abandoned under L. 1877, ch. 404. Inoperative and obsolete.

38. L. 1836, Ch. 451.— Relates to election of an acting canal commissioner. Obsolete.

39. L. 1837, Ch. 143.— Relates to manner of procedure by the commissioners in construction of enlarged canal where land cannot be obtained at satisfactory prices; provides rules for the navigation of the canal under certain circumstances, and prescribes a penalty in relation thereto. Inoperative and obsolete.

40. L. 1838, Ch. 289.— Relates to claims for damages on account of resumption by the state of surplus water for canal use. Superseded by L. 1894, ch. 338, §§ 91, 96. Abrogated and obsolete.

41. L. 1838, Ch. 292.—Act authorizing a survey for a proposed route for a canal from Binghamton to the State line. Temporary and obsolete.

42. L. 1839, Ch. 262.— Relates to toll on Chenango canal. Obsolete.

43. L. 1839, Ch. 333, § 1.— Relates to clerk hire and stationery for canal appraisers. Obsolete.

44. L. 1840, Ch. 288, §§ 13-18.— Section 13 abrogated by Constitution, Art. 7, § 9, which abolished tolls. Section 14 is covered by Canal Law, § 37. Section 15 abrogated by Constitution, art. 7, § 9, which abolished tolls. Sections 16–18 covered by Code Civil Pro., §§ 175–278.

45. L. 1841, Ch. 219.— Conditionally authorized construction of a new route for the Chemung canal and the extension of the same. Obsolete.

46. L. 1842, Ch. 114, § 10.— Relates to the suspension of the public works of the state then in progress, but excepting "certain necessary work to procure or secure navigation of the navigable canals of which the same is a part." Temporary and obsolete.

47. L. 1843, Ch. 240.—Appropriating moneys to arrearages due contractors and others engaged in the public works, including arrearages on the Chemung canal. Obsolete.

48. L. 1844, Ch. 278.— Authorizes the canal commissioners to cause repairs and improvements to be made on the canals and other public works, including the enlargement of the Erie canal. Temporary and obsolete.

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49. L. 1844, Ch. 280.— Provides for reduction in number of canal commissioners and their election by the people. Obsolete.

50. L. 1845, Ch. 6.— Relates to canal commissioners, their term and pay. Obsolete.

51. L. 1845, Ch. 33.— Relates to rate of toll on Montezuma salt. Obsolete.

52. L. 1846, Ch. 246.— Directs the payment out of the revenues of the Erie canal of certain moneys to the canal commissioners to be expended by them in making repairs on the Black River and Genesee Valley canals. Obsolete.

53. L. 1847, Ch. 499, § 1, ¶ 3.— Relates to pay of canal commissioners. Obsolete.

54. L. 1848, Ch. 72, § 4.— Provides that the canal board is authorized to prescribe the duties of division, resident and assistant engineers. L. 1850, ch. 337, § 1, provides that the state engineer and surveyor shall prescribe and define such duties. Section 16 repeals all laws and parts of laws conflicting with provisions of this act.

55. L. 1848, Ch. 218.—Authorizes the canal commissioners to make a continuation of Chemung canal by a route specified and to make changes in Watkins creek so as to protect said creek. Obsolete.

56. L. 1849, Ch. 348.— Restricts allowances to contractors on the canals and also restricting alteration of contracts. The statute has in part been abrogated by Constitution, art. 7, § 9, and in part superseded by L. 1894, ch. 338, § 130. Abrogated and inoperative.

57. L. 1850, Ch. 268.—Authorizes transportation of horses, cattle and animals by railroads without being subject to canal tolls. Canal tolls abolished, Constitution, art. 7, § 9. Abrogated and obsolete.

58. L. 1851, Ch. 80.— Relates to clerk hire for canal appraisers. Obsolete.

59. L. 1854, Ch. 38.— Fixes the salary of the auditor of the canal department. L. 1883, ch. 69, abolishes the office of auditor of the canal department and repeals all acts and parts of acts inconsistent with this act.

60. L. 1854, Ch. 202.— Provides for payment of bills for labor and material furnished upon certain sections of the canals of this state, while title to the superintendency was in conflict. Temporary and obsolete.

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61. L. 1854, Ch. 329.— Sections 1–11, 13 relate to general improvements and enlargements of several canals. Temporary and obsolete. Section 87 provides for a contracting board of which the comptroller shall be a member. L. 1857, ch. 783, § 3, provides that the auditor of the canal department shall be a member of the contracting board in the place of the comptroller. Section 5 repeals all laws and parts of laws, so far as the same may be in conflict with the provisions of this act. Section 12 consolidated in Canal Law, § 69.

62. L. 1854, Ch. 333.— Places Seneca River and Baldwinsville canal under general supervision of the state canal board. Inoperative and obsolete.

63. L. 1855, Ch. 534.— Relates to canal tolls and penalties imposed for defrauding the state thereof. Inoperative and abrogated; § 4 covered by Penal Code, § 478.

64. L. 1857, Ch. 105, § 1, pt.— Provides for publication of notice for bids on canal contracts for thirty days in one daily newspaper in each of certain specified cities and villages. L. 1862, ch. 348, § 1, provides that such notices shall be published for thirty days in the state paper and for three weeks in not more than three newspapers published in the district in which the work is to be done. Also, that all provisions of statute affected inconsistent with provisions of this act are hereby repealed.

65. L. 1857, Ch. 538.— Relates to term of office and salary of canal appraisers. Office abolished by L. 1883, ch. 205. Obsolete.

66. L. 1857, Ch. 777.— Extends part of L. 1854, ch. 202, to Jan. 1, 1858. Temporary.

67. L. 1857, Ch. 783.— Provides for appointment of canal auditor. L. 1883, ch. 69, abolishes the office and repeals all acts and parts of acts inconsistent with this act.

68. L. 1860, Ch. 213, §§ 1-5.—Act relating to general improvement and completion of the canals of the state. Part of § 3 was repealed by L. 1861, ch. 332, § 1, leaving remainder of § 3 alive. Temporary and obsolete. Section 5 is expressly repealed.

69. L. 1861, Ch. 177.— Relates to the duties of the canal auditor. L. 1883, ch. 69, abolishes the office of canal auditor and repeals all acts and parts of acts inconsistent.

70. L. 1862, Ch. 9.— Relates to construction and enlargement of certain sections of Erie canal and particularly relates to duties and powers generally conferred on the canal contracting board.

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Board of contract abolished, L. 1870, ch. 55, § 1. Temporary and obsolete.

71. L. 1862, Ch. 164, § 3.— Prohibits canal commissioners from holding out assurances to contractors that they will be reimbursed for their losses by the legislature. Constitution, art. 7, § 9, prohibits extra compensation on canal contracts. Also superseded by L. 1894, ch. 338, § 134. Abrogated and obsolete.

72. L. 1862, Ch. 169.— Section 3, part, provides for the appointment of engineers and assistant engineers on divisions of canals by the canal board. L. 1876, ch. 385, § 1, provides for their appointment by the state engineer and surveyor. Section 4, part, provides for the temporary employment of assistants to aid engineers who may be appointed by the engineer with the assent of the state engineer and surveyor. L. 1876, ch. 385, § 2, provides that the temporary assistants shall be employed by the state engineer and surveyor with the assent of the canal board. Section 9 repeals all laws which conflict with this act or authorize the appointment or employment of officers or persons whose appointment or employment is herein provided for.

73. L. 1862, Ch. 348.— Changes by an amendment to L. 1859, ch. 105, § 1, the time required for publication of notices by the contracting board. Abrogated by the abolition of the contracting board by L. 1870, ch. 55.

74. L. 1864, Ch. 252.—Authorizes contracting board to increase compensation upon contracts and to accept surrender of contracts for repairs and relet same. Auditor given right to appeal from determination of board. Contracting board abolished, L. 1870, ch. 55. No extra compensation permitted to any contractor on the canals, Constitution, art. 7, § 9. Contracts may be relet; other provisions relating to abandoned contracts; L. 1894, ch. 338, § 140. Abrogated and obsolete.

75. L. 1866, Ch. 794.— Relates to the appointment of a resident engineer for the extension of the Chenango canal. Covered and superseded by L. 1894, ch. 338, § 50.

76. L. 1867, Ch. 577.— Relates to canal contracts; the inspection of canal repairs and rules to be prescribed by contract board. Amends L. 1857, ch. 105, which is noted for repeal. The contract system on canals was abolished by L. 1870, ch. 55. These

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sections are also superseded by L. 1894, ch. 338, art. 3, and particularly by §§ 26, 52, 53, 56, 57, and by L. 1899, ch. 479, § 1. Abrogated and inoperative.

77. L. 1868, Ch. 579.— Relates to claims for damages on canals and to appeal from determination of canal appraisers. Claims for damages now determined by proceedings in the Court of Claims. L. 1894, ch. 338, § 37. Office of canal appraiser was abolished by L. 1883, ch. 205, § 2. Appeal from determination of Court of Claims now taken to Appellate Division, Supreme Court, third department. Code Civil Pro., § 275. Abrogated and inoperative.

78. L. 1871, Ch. 653.— Relates to appointment by canal auditor of one of his clerks as secretary of the canal board in case of the auditor's inability to act in that capacity. Office of auditor abolished, L. 1883, ch. 69, and duties transferred to the comptroller, who is now a member of the canal board. Constitution, art. 5, § 5, and State Finance Law, § 61. Also relates to tolls. Abrogated and obsolete.

79. L. 1871, Ch. 654, § 1, pt.— Relates to expenditures of canal commissioners for repairs for fiscal year then current, and limits same to appropriations unless otherwise ordered by canal board. The duties of commissioners were transferred to superintendent of public works. Constitution, art. 5, § 3. Temporary and obsolete.

80. L. 1871, Ch. 903.— Relates to a towage system. Temporary and obsolete.

81. L. 1871, Ch. 930, § 1, pt.— Relates to certain improvements and provides for advertising for bids for same. Temporary and obsolete.

82. L. 1872, Ch. 850, § 1, pt.— This statute provided for a tax for new work and extra repairs on canals. Statute consisted of two sections, § 2 being time when act takes effect. The part of § 1 recommended for repeal relates to contracts for the execution of the work. Canal contracts are provided for in article 9, Canal Law, which supersedes provisions of statute cited.

83. L. 1873, Ch. 766, § 1, pt.— Provides for a tax for new work and extra repairs on canals. The part of statute recommended for repeal relates to contracts for the execution of the work. Superseded by article 9, Canal Law.

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84. L. 1875, Ch. 145, § 1, pt.— Fixes salaries of canal commissioners. Obsolete.

85. L. 1875, Ch. 499.— Invests the canal commissioners and state engineer with the duty and power of examining Crooked Lake, Chemung, Genesee Valley and Black River canals and determining whether the same should be leased, sold or abandoned. Temporary and obsolete.

86. L. 1876, Ch. 384.— Relates to fixing and adjusting rates of toll. Obsolete.

87. L. 1877, Ch. 309, § 4.— Relates to the collection of canal tolls on certain canals and to their application. Canal tolls abolished, Constitution, art. 7, § 9. Abrogated and obsolete.

88. L. 1884, Ch. 329.— Relates to pending appeals from decisions of canal appraisers. Temporary and obsolete.

89. L. 1885, Ch. 135, § 1.— Provides for transferring records of the canal appraisers to care of clerk of board of claims. Obsolete.

90. L. 1887, Ch. 528.— Relates to powers and duties of comptroller in reference to registry of canal boats. Act has been superseded by L. 1894, ch. 338, § 162. Abrogated and obsolete.

91. L. 1888, Ch. 118, § 1, pt.— Relates to service of notices upon owner of land in cases where same is sought to be appropriated for canal purposes. L. 1894, ch. 338, § 70, has superseded statute cited. Abrogated and inoperative.

92. L. 1894, Ch. 338.— This statute, which is the "old" Canal Law, is recommended for repeal because its live provisions have been incorporated in Canal Law.

93. L. 1894, Ch. 572, §§ 1-4 pt., 5-7.— Relates to improvements in the Oswego, Cayuga and Black River canals and the Seneca lake level of the Chemung canal, such improvements to be finished before the opening of navigation in the year 1895. Temporary and obsolete. Remainder of § 4 is special.

94. L. 1896, Ch. 188.— Consolidated in Canal Law, §§ 32, 141.

95. L. 1896, Ch. 492.— Consolidated in Canal Law, § 85.

96. L. 1896, Ch. 881.— Consolidated in Canal Law, § 189.

97. L. 1897, Ch. 595.— Consolidated in Canal Law, § 111.

98. L. 1898, Ch. 75.— Consolidated in Canal Law, § 60.

99. L. 1899, Ch. 280.— Consolidated in Canal Law, § 47.

100. L. 1900, Ch. 522.— Consolidated in Canal Law, § 16.

101. L. 1901, Ch. 413.— Consolidated in Canal Law, § 21.

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102. L. 1902, Ch. 340.— Consolidated in Canal Law, § 35.

103. L. 1904, Ch. 14.— Consolidated in Canal Law, § 64.

104. L. 1905, Ch. 309.— Consolidated in Canal Law, § 61.

105. L. 1906, Ch. 257.— Consolidated in Canal Law, §§ 26, 27, 153.

106. L. 1907, Ch. 495.— Consolidated in Canal Law, § 33.

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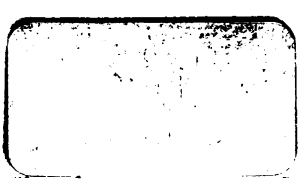

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